(**Without Reference to File**)

SENATE THIRD READING
SB 643 (McGuire)
As Amended September 11, 2015
Majority vote

SENATE VOTE: 26-13

| Committee | Votes | Ayes | Noes |
|---|---|---|---|
| **Business & Professions** | 8-2 | Bonilla, Bloom, Dodd, Eggman, Mullin, Ting, Wilk, Wood | Jones, Gatto |
| **Health** | 11-2 | Bonta, Maienschein, Bonilla, Burke, Chiu, Gomez, Lackey, Santiago, Steinorth, Thurmond, Wood | Chávez, Patterson |
| **Appropriations** | 11-0 | Gomez, Bloom, Bonta, Nazarian, Eggman, Eduardo Garcia, Holden, Quirk, Rendon, Weber, Wood | |
| **Business & Professions** | 8-1 | Bonilla, Baker, Dodd, Eggman, Mullin, Ting, Wilk, Wood | Gatto |

**SUMMARY**: Establishes a comprehensive licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis to be administered by the Department of Consumer Affairs (DCA), Department of Food and Agriculture (CDFA), and Department of Public Health (CDPH), as specified. Specifically, **this bill**:

1) Requires the Medical Board of California (MBC) to prioritize cases for repeated acts of clearly excessive recommending of cannabis to patients without a good faith prior examination of the patient and medical reason therefor, and specifies that it is unprofessional conduct to recommend medical cannabis to a patient without an appropriate prior examination and medical indication.

2) Makes it a misdemeanor for a physician and surgeon who recommends cannabis to a patient for a medical purpose to accept, solicit, or offer any form of remuneration from or to a licensed facility if the physician and surgeon or his or her immediate family has a financial stake in that facility.

3) Requires the Governor to appoint a Chief of the Bureau of Medical Marijuana Regulation (Bureau), within the DCA and authorizes the Chief of the Bureau or a deputy to exercise every power or duty given to the Director.

4) Vests in the DCA the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for medical marijuana activities within the state and to collect related fees, and authorizes the DCA to create additional licenses.

5) Requires the CDFA to administer the provisions of the Act related to the cultivation of medical cannabis, and to create, issue, and suspend or revoke cultivation licenses for violations of the Act.

6) Requires the CDPH to administer the provisions of the Act related to the manufacturing and testing of medical cannabis.

7) Exempts from the licensure requirements of the Act qualified patients who do not provide, donate, sell, or distribute cannabis to any other person, and primary caregivers who provide cannabis exclusively for medical purposes to no more than five specified qualified patients, as specified.

8) Upon the date of implementation of regulations by the licensing authority, prohibits any person from engaging in commercial cannabis activity without possessing both a state license and local authorization, and prohibits a licensee from commencing activity under the authority of a state license until the applicant has obtained a local license or permit, as specified.

9) Provides that revocation of a local license terminates the ability of a medical cannabis business to operate within that local jurisdiction, and that revocation of a state license terminates the ability of a licensee to operate within the state.

10) Requires an applicant for state license to, among other things, submit fingerprints to the Department of Justice, and provide documentation, issued by the local jurisdiction, certifying that the applicant is in compliance with all local ordinances and regulations; evidence of the legal right to occupy the proposed location; for applicants with 20 or more employees, provide a statement that the applicant will enter into, or already has entered into, a labor peace agreement; a seller's permit number; and other specified information.

11) Requires applicants seeking licensure as a testing laboratory to register with the CDPH, and requires applicants seeking licensure to cultivate, distribute, or manufacture medical cannabis to include in their application a detailed description of their operating procedures.

12) Requires a licensing authority to deny an application if the applicant or the premises do not qualify for licensure under the Act, and authorizes a licensing authority to deny a license or license renewal for specified acts.

13) Requires the CDFA to promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

14) Requires the Department of Pesticide Regulation (DPR), in consultation with the CDFA, to develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

15) Requires the CDPH to develop standards for the production and labeling of all edible medical cannabis products.

16) Requires the CDFA, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, to ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the in stream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

17) Provides the CDFA with the authority necessary for the implementation of regulations it adopts pursuant to the Act, and requires those regulations: to regulate weighing or measuring devices; require that cannabis cultivation is conducted in accordance with state and local laws; establish procedures for the issuance and revocation of unique identifiers for cannabis cultivation activities; and prescribe standards, in consultation with the Bureau, for the reporting of necessary information relating to unique identifiers.

18) Requires the DPR, in consultation with the State Water Resources Control Board, to promulgate regulations that require that the application of pesticides or other pest control in connection with the cultivation of medical cannabis to meet standards equivalent to existing law.

19) Specifies various license types for state cultivator licenses issued by the CDFA, including licenses for special outdoor, specialty indoor, specialty mixed-light, small outdoor, small indoor, small mixed-light, outdoor, indoor, and mixed-light cultivation, and nursery licenses, and requires the CDFA to limit the number of outdoor, indoor, and mixed-light licenses, as specified.

20) By January 1, 2020, requires the CDFA, in conjunction with the Bureau, to make available a certified organic designation and organic certification program for medical marijuana, if permitted under federal and state law, as specified, and authorizes the Bureau to establish appellations of origin for marijuana grown in California.

21) Requires the CDFA, in consultation with the Bureau, to establish a track and trace program for reporting the movement of medical marijuana items throughout the distribution chain that use a unique identifier and secure packaging, and is capable of providing specified information, including the licensee receiving the product, the transaction date, and the cultivator from which the product originates.

22) Requires the CDFA to create an electronic database containing the electronic shipping manifests which shall include the quantity, or weight, and variety of products shipped and received; estimated and actual times of departure and arrival; and license number and unique identifiers issued by the licensing authority for all licensees involved in the shipping process.

23) Prior to transporting medical cannabis or medical cannabis products, requires a licensed transporter to complete an electronic shipping manifest and to transmit that manifest to the Bureau and the licensee that will receive the medical cannabis product, and requires licensees receiving the shipment to submit to the licensing agency a record verifying receipt of the shipment and details of the shipment.

24) Authorizes a county to impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by a licensee operating pursuant to the Act, as specified.

25) Provides that the provisions of this Act are severable if any provision or its application is invalid.

26) Makes this bill operative only if AB 266 (Bonta, et al.) and AB 243 (Wood) of the current legislative session is enacted and takes effect on or before January 1, 2016.

27) Makes other technical and conforming changes.

**FISCAL EFFECT**: Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS**:

**Purpose**. This bill is author sponsored. According to the author, "SB 643 seeks to resolve many of the issues created by the enactment of the Compassionate Use Act and subsequent legislation….California voters made it clear that they wanted medical marijuana to be legalized, but issues and concerns for growers, doctors, dispensaries, law enforcement, district attorneys, cities, counties and others have only become more complicated…Since the voters of California passed Proposition 215 in 1996, it has become clear that there needs to be a comprehensive regulation bill from the Legislature that oversees the cultivating, processing, manufacturing, transportation, prescribing and sale of medical marijuana…."

**The Compassionate Use Act (CUA) and SB 420**. In 1996, voters approved the CUA, which allowed patients and primary caregivers to obtain and use medical marijuana, as recommended by a physician, and prohibited physicians from being punished or denied any right or privilege for making a medical marijuana recommendation to a patient. In 2003, SB 420 (Vasconcellos), Chapter 875, established the Medical Marijuana Program (MMP), which allowed patients and primary caregivers to collectively and cooperatively cultivate medical marijuana, and established a medical marijuana card program for patients to use on a voluntary basis. However, since the passage of Proposition 215 and SB 420, the state has not adopted a framework to provide for appropriate licensure and regulation of medical marijuana. As a result, in the nearly 20 years since the passage of Proposition 215, there has been an explosion of medical marijuana collectives and cooperatives that are largely left to the enforcement of local governments, resulting in the creation of a patchwork of local regulations for these industries and with little statewide involvement.

**The California Attorney General's Compassionate Use Guidelines**. SB 420 required the California Attorney General to "…develop and adopt appropriate guidelines to ensure the security and non-diversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996." In 2008, the Attorney General issued guidelines to: 1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, 2) help law enforcement agencies perform their duties effectively and in accordance with California law, and 3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law. According to a 2011 letter, after a series of meeting with stakeholders to assess whether to clarify the 2008 guidelines to stop the exploitation of California's medical marijuana laws by gangs, criminal enterprises, and others, the Attorney General decided to postpone the issuance of new guidelines because of pending litigation and to urge the Legislature to amend the law to establish clear rules governing access to medical marijuana.

**California Supreme Court Affirms Local Control Over Medical Marijuana**. By exempting qualified patients and caregivers from prosecution for using or from collectively or cooperatively cultivating medical marijuana, the CUA and the MPP essentially authorized the cultivation and use of medical marijuana. These laws have triggered the growth of medical marijuana dispensaries in many localities, and in response, local governments have sought to exercise their police powers to regulate or ban activities relating to medical marijuana. After numerous court cases and years of uncertainty relating to the ability of local governments to control medical marijuana activities, particularly relating to the ability to control the zoning, operation, and existence of medical marijuana dispensaries, the California Supreme Court, in *City of Riverside v. Inland Empire Patients* (2013) 56 Cal. 4th 729, held that California's medical marijuana statutes do not preempt a local ban on facilities that distribute medical marijuana. The court held that nothing in the CUA or the MMP expressly or impliedly limited the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders.

**Federal Controlled Substances Act**. Despite the CUA and SB 420, marijuana is still illegal under state and federal law. Under California law, marijuana is listed as a hallucinogenic substance in Schedule I of the California Uniform Controlled Substances Act. Yet, the CUA prohibits prosecution for obtaining, distributing, or using marijuana for medical purposes. However, under the federal Controlled Substances Act, it is unlawful for any person to manufacture, distribute, dispense or possess a controlled substance, including marijuana, whether or not it is for a medical purpose. As a result, patients, caregivers, and dispensary operators, who engage in activities relating to medical marijuana, may still vulnerable to federal arrest and prosecution. According to the California Attorney General's guidelines, the difference between state and federal law gives rise to confusion. However, California has tried to avoid this conflict by deciding not to use the state's powers to punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition.

**United States Department of Justice (USDOJ) Guidance Regarding Marijuana Enforcement**. On August 29, 2013, the USDOJ issued a memorandum that updated its guidance to all United States Attorneys in light of state ballot initiatives to legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. While the memorandum noted that illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels, it also noted that USDOJ is committed to using its limited investigative and prosecutorial resources to address the most significant threats. According to the USDOJ, "In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above…In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity."

**Medical Marijuana Industry in California**. According to the author's Sunrise Questionnaire, submitted to the Committee pursuant to Government Code Section 9148 et seq., by law enforcement estimates, over 60% of all marijuana in the country is grown in the Emerald Triangle counties of Humboldt, Mendocino and Trinity, all of which are in the author's district,

and once the industry is regulated, and the medical marijuana products are certified as safe, the market is expected to open up substantially. In addition, once the industry is regulated, the author believes that physicians who do not recommend or even discuss medical marijuana due to its quasi-legal nature and outright ban from the federal government may be more willing to discuss and recommend medical marijuana to their patients.

The author asserts that the harm starts at the environmental side of things, and simply expands from there. The regional and State Water Boards, along with California Department of Fish and Wildlife, are doing what they can, but without legislation, their hands are largely tied. This leads to streams and rivers literally running dry (even before the current drought) and to huge loads of sediments and toxic wastes being dumped into the watersheds. According to the author, the lack of regulation complicates water supply for millions of legal residential and commercial water users throughout the state-- entire tracts of forests are being mowed down by rogue growers and planted with marijuana with no permits, oversight, or regard for the environment.

The author also believes that the lack of regulation on the processing, manufacturing, testing, transportation and resale needs to be fixed as well, and that without statewide standards produced by specific health and safety testing, ingredient lists, and dosage listings on all marijuana products, people are put at risk.

According to the author, cities and counties that have medical marijuana ordinances take the first step in protecting consumers and the public, but without a strong state-wide regulatory body overseeing all aspects of the product chain, consumers have very little control over the risk unless they have personal knowledge of the product. The author believes that clear guidelines from the state and or the local jurisdiction, backed up by the state, is the only way to ensure protection of consumers and the public.

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