SENATE THIRD READING
SB 643 (McGuire)
As Amended September 1, 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	

SUMMARY: Declares the intent of the Legislature to enact a comprehensive regulatory framework for medical marijuana, and makes this bill operative only if AB 266 (Bonta) of the current legislative session is enacted and takes effect on or before January 1, 2016.

FISCAL EFFECT: None. This bill is keyed non-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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