

Date of Hearing: July 14, 2015

ASSEMBLY COMMITTEE ON HEALTH  
Rob Bonta, Chair  
SB 643 (McGuire) – As Amended June 3, 2015

**SENATE VOTE:** 26-13

**SUBJECT:** Medical marijuana

**SUMMARY:** Establishes the Medical Marijuana Public Safety and Environmental Protection Act (Act) for the regulation and issuance of state licenses, termed conditional licenses in this bill, for medical marijuana (MM) activity. Specifically, **this bill:**

*Medical Marijuana Recommendations*

- 1) Requires the Medical Board of California (MBC) to prioritize, investigate, and prosecute cases under which a physician excessively recommends marijuana to patients for medical purposes without a good faith prior examination of the patient and medical reason.
- 2) Makes it a misdemeanor for a physician and surgeon who recommends marijuana for a patient for a medical purpose to accept, solicit, or offer any form of payment from or to a facility issued a conditional license pursuant to the Act, if the physician and surgeon or his or her immediate family have a financial interest in that facility.
- 3) Requires the MBC to consult with the California Marijuana Research Program, under the direction of the University of California, in the development and adoption of medical guidelines for the appropriate administration and use of MM.
- 4) Prohibits a physician and surgeon from recommending MM to a patient unless that person is a patient's attending physician, as defined.

*Definitions*

- 5) Defines "dispensary" as a distribution operation that provides MM or MM-derived products to patients and caregivers.
- 6) Defines a "licensed cultivation site" as a facility that plants, grows, cultivates, harvests, dries, or processes MM and that is issued a conditional license.
- 7) Defines "licensed dispensing facility" as a dispensary or other facility that provides MM, MM products, or devices for the use of MM products that is issued a conditional license.
- 8) Defines "licensed manufacturer" as a person who extracts, prepares, derives, produces, compounds, or repackages MM or MM products into consumable and nonconsumable forms and that is issued a conditional license.
- 9) Establishes the Office of Medical Marijuana Regulation (Office) under the Business, Consumer Affairs, and Housing Agency, and requires the protection of the public to be the highest priority for the Office in exercising its licensing, regulatory and disciplinary functions.

- 10) Defines "Chief" as the Chief of the Office of Medical Marijuana Regulation.
- 11) Defines "licensed transporter" as an individual or entity issued a conditional license by the Office to transport MM to and from facilities that have been issued conditional licenses in limited quantities.
- 12) Defines "edible MM product" as an MM or an MM-derived product that is ingested or meant to be ingested through the mouth and into the digestive system.

### *Administrative Provisions*

- 13) Provides that the Office has the authority to issue, suspend, or revoke conditional licenses for the cultivation, manufacture, transportation, storage, distribution, and sale of MM within California and collect fees in association with those activities.
- 14) Authorizes the Office to adopt and enforce rules and regulations that he or she determines are reasonably necessary to carry out the Act, and to appoint and compensate personnel to assist in carrying out those rules and regulations.
- 15) Requires the funds for the establishment and support of the Office to be advanced as a loan from the General Fund (GF), to be repaid by the initial proceeds from fees collected as part of any rule or regulation of the Act.
- 16) Provides the Office with the authority to implement the Act, including:
  - a) Establishing rules or regulations necessary to carry out the Act;
  - b) Issuing conditional licenses to individuals; setting specified fees for conditional licenses;
  - c) Establishing standards for the cultivation, manufacturing, transportation, storage, distribution, provision, donation, and sale of MM and MM products;
  - d) Establishing procedures for the issuance, renewal, suspension, and revocation of conditional licenses; and,
  - e) Enforcing the licensing and regulatory requirements of the Act, including the imposition of penalties.
- 17) On or before January 1, 2018, requires the Office to promulgate regulations for implementation and enforcement of the Act related to conditional licensure.
- 18) Requires the Chief to keep a complete record of all facilities issued a conditional license to be made available on the Office's Internet Website, and to provide information upon request.
- 19) Requires the Office to establish procedures to provide state and local law enforcement, upon request, with 24-hour access to information regarding conditional licenses, transportation manifests, and facility inventories for enforcement purposes.

20) Provides that the Act does not supersede the provisions of Measure D, approved by the voters of the City of Los Angeles on the May 21, 2013, ballot for the city, which grants MM businesses and dispensaries qualified immunity consistent with the terms of the measure and local ordinances, or any similar measure in other jurisdictions.

***Conditional Licensing Provisions***

- 21) Exempts qualified patients and primary caregivers who care for no more than five specified patients, who engage in MM activity, from the requirement for conditional licensure.
- 22) Except as allowed under the Compassionate Use Act (CUA), prohibits the following:
- a) An individual from selling or providing MM to a patient or caregiver other than at a licensed dispensing facility or through delivery from a licensed dispensing facility;
  - b) An individual from growing MM other than at a licensed cultivation site;
  - c) An individual, other than a licensed manufacturer, from manufacturing MM or MM products; and,
  - d) An individual, other than a licensed transporter, from transporting MM from on facility issued a conditional license to another.
- 23) Allows a licensed manufacturer to obtain MM from a licensed cultivator and to furnish MM products to a licensed dispensary.
- 24) Requires the Office to provide for and issue conditional licenses, no later than July 1, 2018, for all activity authorized under the Act, including, but not limited to, cultivation, processing, storage, transport, and dispensing of MM. Requires the conditional license to certify, at a minimum, that the applicant has paid the state conditional licensing fee, successfully passed a criminal background check, and met state residency requirements.
- 25) Clarifies that the issuance of a conditional license does not, in and of itself, authorize a recipient to begin MM business operations. Prohibits a conditionally licensed facility from beginning activity under the conditional license until the applicant has also obtained a license or permit from the local jurisdiction in which he or she proposed to operate, in accordance with the requirements of the local ordinance.
- 26) Requires applicants for conditional licenses to meet specified conditions, and prohibits the Office from issuing a conditional license to individuals, entities, or for premises under specified circumstances. Requires each conditional license to be valid for 12 months after the date of issuance, and requires the Office to establish procedures for the renewal of conditional licenses.
- 27) Authorizes a facility or entity that is operating in accordance with local zoning ordinances and other state and local requirements on January 1, 2016, to continue its operations until its application for conditional licensure is approved or denied.

- 28) Requires the Office, via regulation, to establish conditions upon which a person whose conditional license has previously been revoked, denied, or suspended to be issued a conditional license.
- 29) Requires an application for a conditional license to be denied and a conditional license to be suspended or revoked for past felony convictions for any of the following:
- a) The possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance;
  - b) Drug trafficking;
  - c) Embezzlement;
  - d) Fraud or deceit; and,
  - e) Violent or serious felonies, as defined.
- 30) Prohibits a conditional license from being denied solely on the basis of a prior conviction for a felony committed after the enactment of the CUA, but which would not be a felony after the enactment of the Act. Authorizes the Office, at its discretion, to issue a conditional license to an applicant that has obtained a certificate of rehabilitation, as defined.
- 31) Authorizes the Office to deny, suspend, or revoke a conditional license under specified conditions, and requires the Office to notify the applicant or licensee, in writing of the denial, suspension or revocation of the conditional license.
- 32) Requires an application for or renewal of a conditional license to be denied under any of the following conditions:
- a) The applicant fails to meet the requirements of the Act or has had an applicable permit or license revoked or denied by an applicable local agency;
  - b) The applicant, or any of its officers, directors, owners, members, or shareholders, is a minor, has been sanctioned by the Office, a city, county, or city and county, for MM activities conducted in violation of the Act or any applicable local ordinance, or has had a license revoked in the previous five years;
  - c) The applicant has knowingly answered a question or request for information falsely on the application form or failed to provide information requested;
  - d) The proposed cultivation, processing, possession, storage, manufacturing, testing, transporting, distribution, provision, or sale of MM will violate any applicable law or ordinance; or,
  - e) The applicant or owner is unable to establish that he or she has been a resident of California for not less than 12 months.

- 33) Requires a conditional license to be subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate. Prohibits a facility from operating in a local jurisdiction that prohibits the establishment of that type of business, and provides that local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are conditionally licensed.
- 34) Authorizes the Office to adopt regulations to limit the number of conditional license issued after finding that the otherwise unrestricted issuance of conditional licenses is dangerous to the health and safety of the public.

### *Fee Provisions*

- 35) Requires the Office to establish conditional licensing fees at a level sufficient enough to fund the reasonable administrative and enforcement costs of the Act.
- 36) Requires a cultivation facility, in addition to the conditional licensing fee, to be assessed a fee sufficient to cover the reasonable regulatory costs of enforcing the environmental impact provisions relating to cultivation facilities, and to be distributed to state and local agencies and law enforcement.
- 37) Establishes the Medical Marijuana Regulation Fund (Fund), and the Special Account for Environment Enforcement within the Fund, under the direction of the Office. Provides that the Special Account for Environment Enforcement is established to enforce the environmental regulation of licensed cultivation sites.
- 38) Requires all fees collected in accordance to the Act to be deposited into the Fund, and for all moneys within the Fund to be made available for the sole purposes of fully funding and administering the Act, subject to an appropriation by the Legislature.
- 39) Requires all moneys collected as a result of penalties in the Act to be deposited directly into the GF.
- 40) Authorizes the Office to establish and administer a grant program to state and local entities for the purpose of assisting with MM regulation and enforcement, subject to appropriation by the Legislature.
- 41) Prohibits a facility with a conditional license from acquiring, cultivating, processing, possessing, storing, manufacturing, distributing, selling, delivering, transferring, transporting, or dispensing MM for any other purpose other than those authorized under the Act.
- 42) Prohibits a licensed dispensing facility from acquiring, cultivating, processing, possessing, storing, manufacturing, distributing, selling, delivering, transferring, transporting, or dispensing MM plants or MM products except through a licensed cultivation site or a licensed manufacturer.

***Transportation Provisions***

- 43) Requires a licensed transporter to ship only to facilities issued a conditional license, and in response to a request for a specific quantity and variety from those facilities.
- 44) Requires a licensed transporter, prior to transporting MM products, to complete a shipping manifest, using a form prescribed by the Office, and securely transmit a copy of the manifest to the licensee that will receive the MM product, and the Office upon request.
- 45) Requires both the licensed transporter making the shipment and the licensee receiving the shipment to maintain each shipping manifest and make it available to local code enforcement officers, the Office, and any other locally designated enforcement entity, upon request.
- 46) Applies the following requirements to only licensed transporters:
- a) Transported MM products is required to be transported only in a locked, safe, and secure storage compartment that is securely affixed to the interior of the transporting vehicle, and not be visible from the outside of the vehicle;
  - b) Vehicles transporting MM are prohibited from having external markings or other indications that it is transporting MM;
  - c) All transport vehicles carrying MM with a retail value greater than \$10,000 are required be staffed with a minimum of two employees, and requires at least one transport team member to remain with the vehicle at all times when the vehicle contains MM;
  - d) Each transport team member is required to have access to a secure form of communication by which each member can communicate with personnel at the licensed facility at all times when the vehicle contains MM; and,
  - e) Each transport team member is required to possess documentation of licensing and a government-issued identification card at all times when transporting or delivering MM and to produce it upon request by any representative of the Office or law enforcement.
- 47) Provides that specified transport provisions cannot be construed to authorize or permit a licensee to transport, or cause to be transported, MM or MM products outside California.
- 48) Prohibits a local jurisdiction from preventing transportation through or to a facility issued a conditional license, by a conditionally licensed transporter who acts in compliance with the Act.

***Enforcement Provisions***

- 49) Provides that a state agency is not required to enforce a city, county, city and county, or local law, ordinance, rule, or regulation regarding the site or operation of a facility issued a conditional license.

- 50) Authorizes the Office to assist state taxation authorities in the development of uniform policies for the state taxation of licensees.
- 51) Authorizes the Office to enforce all of the requirements of the Act, including any regulations adopted.
- 52) Requires the Office to delegate the authority to enforce the requirements of the Act, including any regulations, to a city, county, or city and county, upon request of that entity.
- 53) Provides that nothing in this bill's provisions shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements, or enforcement of local licensing requirements, or to require the Office to undertake responsibilities for those activities.
- 54) Requires that a willful violation of the requirements for a conditional license, including an attempt to falsify information on an application or to otherwise defraud or mislead a state or local agency in the course of the application process, shall be punishable by a civil fine of up to \$35,000 for each individual violation.
- 55) Requires, at the Office's discretion, a technical violation of the requirements for a conditional license to be punishable by a civil fine of up to \$10,000 for each individual violation.
- 56) Authorizes a district attorney, county counsel, city attorney, or city prosecutor, to bring an action to enjoin a violation or the threatened violation of any provision of the Act. Requires the action to be brought in the county in which the violation occurred or is threatened to occur. Requires a proceeding brought forward to conform to requirements of existing law. Provides that the authority of a local government to take required enforcement actions pertaining to its own ordinances or regulations is not to be diminished.
- 57) Prohibits anything within the Act to prevent a city or other local from taking action in the Medical Marijuana Program (MMP), in accordance with existing law.
- 58) Provides that nothing within the Act is to be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a facility issued a conditional license.
- 59) Requires the Office to notify local law enforcement of all conditional licenses issued for cultivation sites in that jurisdiction.
- 60) Requires a licensed cultivation site to display the state license in a manner so as to be available and easily read at the location.
- 61) No later than January 1, 2022, requires all MM grown, produced, distributed, and sold in the state to meet certified organic standards.
- 62) Requires the Office to establish appellations of origin for marijuana grown in California.
- 63) Requires the Office to work with specified entities to provide all the information and forms required for conditional licensure as a cultivation site in a single location, including state licensure, local requirements in that jurisdiction, and environmental requirements.

***Advertising, Security, and Recordkeeping Provisions***

- 64) Prohibits a person from distributing any form of advertising for physician recommendations for MM in California unless the advertisement bears a notice to consumers, that reads:

*NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use marijuana for medical purposes where medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of medical marijuana. Physicians are licensed and regulated by the Medical Board of California and arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility.*

- 65) Requires advertisements for physician recommendations for MM to meet advertising requirements in existing law.
- 66) Requires a facility issued a conditional license to implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing marijuana and theft of marijuana at those facilities.
- 67) Requires a facility issued a conditional license to notify appropriate law enforcement authorities within 24 hours after discovery of inventory discrepancies, diversion, theft, loss, criminal activity, the loss of records, or any other security breach.
- 68) Requires a licensed cultivation site to weigh, inventory, and account for on video, all MM to be transported prior to its leaving its origination location. Requires the licensed dispensing facility, within eight hours upon arrival at the destination, to reweigh, reinventory, and account for on video, all transported marijuana.
- 69) Requires information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in the records kept by the Office for administration purposes to be kept confidential and exempt from the California Public Records Act.
- 70) Provides that nothing shall prevent any of the following:
- a) Office employees from notifying state or local agencies about information submitted to the Office that the employee suspects is falsified or fraudulent;
  - b) Notification from the Office to state or local agencies of apparent violations of the Act or an applicable local ordinance;
  - c) Verification of requests by state or local agencies to confirm licenses and certificates issued by the office or other state agency; or,
  - d) Providing information requests in accordance with a court order or subpoena issued by a court, an administrative agency, or local governing body authorized by law to issue subpoenas.



- 71) Prohibits information from being disclosed by the Office beyond what is necessary to achieve the goals of a specific investigation or notification or the parameters of a specific court order or subpoena.
- 72) Proclaims that the actions of a licensee, its employees, and its agents, that are permitted pursuant to a conditional license and that are conducted in accordance with the requirements of, and adopted regulations from, the Act are not unlawful under state law and are not an offense subject to arrest or prosecution.
- 73) Proclaims the actions of a person who, in good faith and upon investigation, allows his or her property to be used by a licensee, its employees, and its agents, as permits pursuant to a conditional license, are not unlawful under state law and are not an offense subject to arrest or prosecution.
- 74) Prohibits a licensee from cultivating, processing, storing, manufacturing, transporting, or selling MM in California unless accurate records are kept at the licensed premises of those activities by the licensee. Allows a licensee who has a conditional license for more than one premises to keep all records at one of the conditionally licensed premises. Requires records to be kept for seven years from the date of the transaction.
- 75) Authorizes the Office or a local agency delegated the authority to enforce the licensing requirements of the Act to examine the books and records of a conditional licensee and to visit and inspect the premises of a conditional licensee, as deemed necessary by that entity to perform its duties. Requires books or records requested by the enforcement entity to be provided by the conditional licensee no later than five business days after the request is made. Provides that a licensee shall be subject to a civil fine of \$15,000 for each individual violation of failure to maintain or provide books and records.
- 76) Authorizes the Office or a local agency to enter and inspect the premises of a facility issued a conditional license between the hours of 8 a.m. and 8 p.m. on any day the facility is open, or any reasonable time, to ensure compliance and enforcement of the Act.
- 77) Authorizes the office to suspend a conditional license and commence proceedings for the revocation of a conditional license, if a licensee or an employee of a licensee refuses, impedes, obstructs, or interferes with an inspection of the licensed facility.

### ***Tax Provisions***

- 78) Authorizes a city, county, or city and county, to impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing marijuana by a licensee, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitously, as determined by the board of supervisors or city council.
- 79) Requires the board of supervisors or city council to specify in the ordinance proposing the tax, the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax. Authorizes the tax to be imposed for general governmental purposes or for purposes specified in the local ordinance.

- 80) Requires the tax imposed by local ordinances to be subject to applicable approval requirements imposed by existing law.
- 81) Provides that the imposition of a tax does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee or charge upon, or related to, activities related to the activities of a conditional license, as otherwise provided by law.
- 82) On or before July 1, 2016, requires the State Board of Equalization to compile a report on the estimated tax collected of the sale of MM, using the most current data available. Requires the report to include the expected tax revenues, under the existing tax structure, for the years 2016 to 2010, inclusive, and for the report to be submitted to the Legislature and the Governor's office.

***Collective Model Provisions***

- 83) Eliminates protections from prosecution for qualified patients, persons with valid identification cards, and designated primary caregivers who specifically cultivate marijuana for medical purposes through a collective or cooperative model.
- 84) Provides an individual employee, officer, or board member of a facility issued a conditional license pursuant to the Act will not be subject to state criminal sanctions in existing law, based solely on holding a conditional license for the possession, cultivation, processing, packaging, storage, transportation, sale, or distribution of MM to a facility also holding a conditional license, or directly to a qualified patient, a person with a valid identification card, or a designated primary caregiver, unless the license and related paperwork is falsified.

***Labeling, Testing and Edible MM Provisions***

- 85) On or before July 1, 2017, requires the Office to report to the Legislature on the feasibility of developing a program to certify laboratories for the testing of MM and related products, and the feasibility of developing a labeling requirement for edible marijuana products that incorporates information on the cannabinoid content.
- 86) Requires a facility issued a conditional license to maintain supplier information in the event of recall procedures, and for labeling of all MM and MM products.
- 87) Declares edible MM products to be unadulterated food products.
- 88) Requires all edible MM products to comply with quality assurance standards in existing law, in addition to the following:
- a) Allowance for baked edible MM products, that do not require refrigeration or hot holding, to be manufactured, sold, or otherwise distributed at facilities issued a conditional license;
  - b) A requirement that a facility issued a conditional license has an owner or employee who has successfully passed an approved and accredited food safety certification examination, as specified in existing law, prior to selling, manufacturing, or distributing edible MM products requiring refrigeration or hot holding;

- c) A requirement that individuals manufacturing or selling edible MM products to thoroughly wash their hands before commencing production and handling finished edible MM products;
- d) A requirement that all edible MM products sold for direct consumption and infused with marijuana concentrate to be individually wrapped at the original point of preparation;
- e) A requirement that products containing tetrahydrocannabinol (THC) to be prepared in compliance with maximum potency standards for THC and THC concentrates;
- f) A requirement that, prior to sale or distribution at a licensed dispensing facility, edible MM products are labeled and in an opaque and tamper evident package. Requires labels and packages of edible MM products to meet specified requirements;
- g) A prohibition of photos or images of food on the packages or labels of edible MM products; and,
- h) A requirement that only generic food names may be used to describe edible MM products.

**EXISTING LAW:**

- 1) Authorizes a county or city, with its jurisdiction, to make and enforce all local, policy, sanitary, and other ordinances and regulations not in conflict with general laws.
- 2) Licenses and regulates physicians and surgeons, including osteopathic physicians, under the Medical Practice Act by the MBC within the Department of Consumer Affairs.
- 3) Establishes the Sherman Food, Drug, and Cosmetic Law to regulate the packaging, labeling, and advertising of drugs and devices, under the direction of the Department of Public Health (DPH).
- 4) Prohibits the sale, possession, possession for sale, cultivation, transport, import, furnishing, donation, processing, administering, dispensing, and distribution of marijuana, punishable by imprisonment and/or fines, unless otherwise allowed by existing law.
- 5) Establishes the CUA of 1996 under Proposition 215 in law, which does the following:
  - a) Protects physicians from punishment, or denial of any right or privilege, for the recommending marijuana to a patient for medical purposes; and,
  - b) Provides that a qualified patient or primary caregiver, as defined, who possesses or cultivates marijuana for his or her own personal medical purpose with the written or oral recommendation or approval of a physician, shall not be punished.
- 6) Encourages the University of California to create the California Marijuana Research Program to commission objective scientific research concerning the efficacy and safety of administering marijuana as part of medical treatment.

- 7) Establishes the MMP under the direction of the DPH.
- 8) Defines an “attending physician” as an individual who possesses a license in good standing to practice medicine or osteopathy issued by the MBC or the Osteopathic Medical Board of California and who has taken the responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of patient and who has conducted a medical examination of that patient prior to recording in the patient’s medical card the physician’s assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.
- 9) Defines “primary caregiver” as an individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.
- 10) Defines a “qualified patient” as an individual who is entitled to the protections of the CUA, but who does not have an identification card pursuant to the MMP established in existing law.
- 11) Requires DPH to establish and maintain a voluntary program to issue identification cards to qualified patients of MM and voluntarily apply to the identification card program, and requires county health departments to issue identification cards to qualified patients and their caregivers.
- 12) Provides that qualified patients, persons with valid identification cards, and primary caregivers, who associate in order to collectively or cooperatively cultivate marijuana, are not subject to criminal liability solely on that basis.
- 13) Provides that individuals shall not be accommodated for the use of MM on the property or premises of any place of employment or during the hours of employment, or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.
- 14) Prohibits anything within the MMP from preventing a city or local governing body from adopting a local ordinance that regulates the location, operation, or establishment of a medical marijuana cooperative or collective, enforcing local ordinances for civil or criminal purposes, or enacting other laws consistent with the MMP.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, ongoing costs, likely over \$20 million per year to license MM cultivators, transporters, and dispensaries by the new Bureau of Medical Marijuana Regulation (special fund). For comparison, the California State Board of Pharmacy, which licenses and regulates pharmacists and pharmacies in the state has an annual budget of about \$20 million per year.

This bill would create a new Bureau dedicated to licensing and enforcing licensing requirements on the MM industry. The annual costs to operate the new Bureau are highly uncertain. For example, the number of MM cultivators, transporters, and dispensaries that would apply for licensure under this bill is not known, in part because it is difficult to know how the licensing and regulatory requirements in this bill will change current practices in the MM industry.

Unknown costs for enforcement of this bill's requirements by local governments (local funds and special funds). This bill requires both the new Bureau and local governments to take responsibility for enforcement activity. How those responsibilities will be divided between levels of government and how much funding the state will make available to local governments for enforcement activity is unknown at this time. Because local governments have the legal authority under this bill to prohibit the operation of MM facilities in their jurisdictions, local governments can essentially opt out of the enforcement responsibilities required under this bill. Thus the state is not likely to be required to reimburse local governments for enforcement costs.

Unknown costs for the Department of Justice (DOJ) to conduct criminal background checks of licensees (special fund). Under current practice, applicants for a criminal background check are required to pay the \$65 cost to conduct a criminal background check using fingerprint databases.

Unknown fee revenues to offset the costs to implement this bill (special fund). This bill gives the new Bureau broad authority to set licensing fees sufficient to pay for the Bureau's costs to operate the licensing program, costs incurred by the Bureau or the DOJ to enforce this bill, costs incurred by local law enforcement agencies to enforce this bill, and costs incurred by state and local environmental agencies for enforcement costs relating to cultivation facilities. The fee revenues generated under this bill would depend both on the allowed costs that are incurred at the state and local level as well as the feasibility of collecting sufficient fees from the MM industry. This bill would continuously appropriate the fee revenues deposited in a new special fund to implement this bill.

#### COMMENTS:

- 1) PURPOSE OF THIS BILL.** According to the author, this bill seeks to resolve many of the issues created by the enactment of Proposition 215, or the Compassionate Use Act, and subsequent legislation. The author states California voters clarified their desire to legalize MM; however, there are growing issues and concerns for all MM stakeholders. The author explains how he represents the remote areas of Mendocino, Humboldt, and Trinity Counties, which are a primary growing region for MM in the country, responsible for up to 70% of the marijuana grown in the western United States. The author contends much of these local areas have become dependent on the economic benefits of marijuana cultivation, but also suffer from the negative environmental, public safety, and public health effects that arise from rogue cultivators and the lack of regulation of MM. The author maintains that trespass grows have become an environmental disaster, illegally diverting millions of gallons of water from rivers and streams, creating a clearance ground for pesticides, insecticides, rodenticides, and fertilizers, and depositing large amounts of sediment into waterways from crop runoff.

The author contends that since the passage of Proposition 215 in 1996, it has become clear that the state is in need of comprehensive regulation under the direction of the Legislature for the oversight of the cultivating, processing, manufacturing, transportation, prescribing, and safe of MM. The author maintains that existing law virtually contains no rules and regulations on the cultivation of MM and that it is important to bring this legal crop into the regulatory framework expected of other commodities. The author states the severe drought California is now experience has only made the need for this bill more urgent. The author concludes this bill contains provisions necessary to recognize the voters' mandate of Proposition 215 and streamlines the ability of the MM industry to grow and sell a legal product.

## 2) BACKGROUND.

- a) **Medical use and research of marijuana.** The marijuana, or cannabis, plant produces a resin containing compounds called cannabinoids, which are the active ingredients within the plant. Cannabinoids directly affect the central nervous system and immune system within the human body. Some cannabinoids are psychoactive, or act on the brain and have the potential to alter mood or consciousness. Two of the primary active cannabinoids within the marijuana plant are THC and cannabidiol (CBD).

Clinical trials on the medical effectiveness of marijuana are extremely limited due to the fact the federal government considers the marijuana plant to be dangerous and to have no medical benefits. As such, researchers must meet a myriad of requirements prior to gaining approval to conduct clinical research. Federal regulations currently require investigators seeking to conduct clinical trials with marijuana to gain approval from the U.S. Food and Drug Administration, the U.S. Drug Enforcement Administration, and the U.S. National Institute on Drug Abuse. In addition, approved protocols may only utilize marijuana supplied by the University of Mississippi, the sole provider of cannabis for federally approved research. An additional regulatory requirement mandating that the U.S. Public Health Service review all clinical protocols was eliminated in June 2015.

Results from the limited research on the medicinal properties and adverse effects of marijuana suggests that cannabinoids, the active ingredient in the marijuana plant, are associated with improved symptoms of patients with a variety of clinical indications, though not all associations have yielded statistically significant results. For example, some studies provide limited evidence that cannabinoids may be beneficial for conditions such as spasticity due to multiple sclerosis, and chronic neuropathic and cancer pain.

- b) **CUA and MMP.** On November 5, 1996, the voters of California approved Proposition 215, a landmark initiative that allowed for the statewide medical use of marijuana for the first time in the history of the nation. Proposition 215, also referred to as the CUA, protects California physicians from prosecution for recommending marijuana to a patient for medical purposes, and protects qualified patients and primary caregivers from prosecution related to the possession or cultivation of marijuana. The CUA also makes findings and declarations on: the right of seriously ill Californians to obtain and use marijuana for medical purposes when appropriate and recommended by a physician; ensuring that qualified patients and primary caregivers are not subject to criminal prosecution or sanction; and, encouraging the federal and state government to implement a plan to provide for the safe and affordable distribution of marijuana to all in-need patients. Although allowed by law, the CUA does not explicitly grant the California State Legislature the authority to amend or repeal any provisions within the CUA without submitting the change to voters; thus any amendments to the CUA by the Legislature without approval of the voters would be deemed unconstitutional.

In an effort to increase access to MM by qualified patients and primary caregivers, and to provide protections to qualified patients and primary caregivers from prosecution for the possession and cultivation of MM, California enacted SB 420 (Vasconcellos), Chapter 85, Statutes of 2003, which established the MMP. The MMP, among other things, provides for the creation of a voluntary program for the issuance of MM identification cards to qualified patients. The MM identification cards are intended to help law

enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest. The MMP also creates protections for qualified patients and primary caregivers from prosecution for the formation of collectives and cooperatives for MM cultivation. The MMP sets a cap on the maximum amount of MM a qualified patient or primary caregiver can possess and the maximum number of plants each can grow; and, authorized the California Attorney General to adopt guidelines to ensure the security and non-diversion of MM. In 2008, Attorney General Brown released guidelines that affirm the legality of MM collectives and cooperatives, but make clear that such entities cannot be operated for profit, may not purchase marijuana from unlawful sources, and must have a defined organizational structure that includes detailed records proving that users are legitimate patients.

Although the MMP expanded upon the CUA and provided California with some of its first guidelines regarding MM activity, it did not explicitly provide for robust state regulations or sanctions related to MM activity. As a result, MM activity through collectives and cooperatives has expanded nearly uncontrollably throughout California, regulated only by local agencies and governments, and leaving the state with a plethora of patchwork standards for MM activity.

- c) **Federal Controlled Substances Act (CSA).** At the federal level, marijuana remains classified as a Schedule I substance under the CSA, making distribution of marijuana a federal offense. Adopted in 1970, the CSA established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. Federal law defines a Schedule I substance as any drug or substance having a high potential for abuse, no accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Other Schedule I substances include specific types of opiates, opium derivatives (e.g. heroin), and hallucinogenic substances (e.g. lysergic acid diethylamide, commonly referred to as LSD).

The guidelines published by the California Attorney General, as a result of compliance with the MMP, state the incongruity between federal and state law has given rise to confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Although California's MM laws have been challenged in court on the basis that they are preempted by the CSA, these cases have been unsuccessful. The California Attorney General's guidelines clarify that neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not legalize MM, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. In light of the fact that the state has decided to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, the California Attorney General's guidelines recommend that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's MM laws.

- d) **Case law surrounding California's marijuana laws.** The Legislature enacted SB 420 in part to clarify the CUA. As part of its provisions, SB 420 limited the amounts of MM that were allowed to be possessed and cultivated legally to eight ounces of dried

marijuana and either six mature or 12 immature marijuana plants, respectively. However in *People v. Kelly* (2010) 47 Cal.4<sup>th</sup> 1008, the California Supreme Court ruled that the state government is no longer allowed to impose any legal limits on the amount of marijuana that MM users can grow or possess, on the grounds that SB 420 amended Proposition 215, and the California Constitution prohibits legislative tampering with ballot initiatives approved by voters, unless explicitly allowed by the initiative.

The California Supreme Court also granted review in several cases related to the rights of qualified patients and dispensaries, specifically on the legality of local rules regarding the operation and location of dispensaries and cultivation sites. In 2013, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) Ct.App. 4/2 E052400, the Supreme Court of California ruled that the state's MM statutes do not preempt a local ban on facilities that distribute MM. Later that year, in *Maral v. Live Oak* (2013) Ct.App. 3 C071822, an appellate court decision ruled that cities and counties are permitted to prevent patients from growing their own medicine, despite the fact that it is allowed under state law. The results of these cases inevitably have a significant impact on the degree of local control that would be granted by the state in any statewide regulatory framework for MM activity.

- e) **MBC guidelines.** In its most recent guidelines, updated in October 2014, the MBC clarifies that physicians who recommend MM to their patients will not be subject to investigation or disciplinary action by the MBC, as long as they arrive to the recommendation in accordance with accepted standards of medical responsibility. The accepted standards include having a history and performing an appropriate prior examination of the patient; developing a treatment plan with objectives; providing appropriate consent to the patient; providing periodic review of the treatment's efficacy; providing consultation, as necessary; and, maintaining proper medical records. The guidelines further clarify that although making a recommendation to a patient in writing may trigger federal action against a physician, it does not instigate any action by the MBC.
- f) **Guidance from the United States Department of Justice (USDOJ).** Federal guidance on the issue of enforcement of the marijuana industry has vacillated to a certain extent in recent history. In October of 2009, the USDOJ sent a memo, known as the Ogden Memo, to federal prosecutors encouraging them to make efficient and rational use of its limited investigative and prosecutorial resources when pursuing prosecution of individuals who engage in MM activity. The 2009 memo stated that although prosecution of significant traffickers of illegal drugs, including marijuana, remains a core priority for the USDOJ, it encouraged them to not focus federal resources on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana, such as those individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law.
- Two years following the Ogden Memo, the USDOJ published the 2011 Cole Memo to provide clarification to the previous memo. This second memo reasserted the federal government's authority and intent to prosecute marijuana-related activity. The 2011 Cole Memo acknowledged the increase in scope of commercial cultivation, sale, distribution, and use of marijuana for purported medical purposes, stating the Ogden Memo was never intended to shield such activities from federal enforcement action and prosecution, even



where those activities assert to comply with state law. It further clarified that any persons who are in the business of cultivating, selling, or distributing marijuana are in violation of the CSA, regardless of state law, clearing stating federal officials' position that MM dispensaries should not be given legal shelter.

In August of 2013, the USDOJ announced its most recent update to their marijuana enforcement policy, the 2013 Cole Memo, with a much more progressive shift in attitude towards marijuana-related activity. The 2013 Cole Memo asserts that while marijuana remains illegal federally, the federal government is less likely to enforce marijuana-related activity in states that have enacted laws legalizing marijuana in some form, and have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana. However the USDOJ still reserves the right to challenge state policies at any time it feels it is appropriate and necessary.

In an effort to provide guidance to states in their creation of robust systems that affirmatively address the federal government's primary concerns related to MM, the 2013 USDOJ memo outlined the following eight priorities for enforcement related to marijuana:

- i) Preventing the distribution of marijuana to minors;
- ii) Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- iii) Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- iv) Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- v) Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- vi) Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- vii) Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and,
- viii) Preventing marijuana possession or use on federal property.

The 2013 Cole memo further suggested that the existence of a strong and effective state regulatory system and a marijuana operation's compliance with such a system may allay the threat that an operation's size poses to federal enforcement interests, and encouraged federal prosecutors to review marijuana cases on a case-by-case basis, and consider whether or not the operation is in compliance with a strong and effective state regulatory system prior to prosecution.

To date, existing law in California does not provide for a robust and effective state regulatory system for MM; it merely provides limited protections to qualified patients and primary caregivers from prosecution. Because existing state law does not prohibit local jurisdictions from enacting ordinances related to MM activity, several local jurisdictions have established their own policies regarding MM activity, which are not all fully consistent or compliant with the priorities outlined in the 2013 Cole Memo.

- g) **Marijuana policies in other states.** As of 2015, 23 states, the District of Columbia, and Guam allow for MM programs. Although California was the first to allow for the medical use of marijuana, it remains the only state that allows its use without a robust state regulatory framework. States with MM laws generally have some form of patient registry, which may provide some protection against arrest for possession up to a certain amount of marijuana for personal medicinal use. A limited number of states restrict MM usage to products with low to zero THC and high CBD concentrations, in an effort to more strictly limit the use of THC, known for its psychoactive effects.
- h) **Medical vs. recreational use.** To date, only Alaska, Colorado, Oregon, Washington, and the District of Columbia have legalized the use of recreational marijuana. According to the Brookings Institute, since the early 1990s, U.S. public opinion has trended in favor of marijuana legalization. Since 2010, support for marijuana legalization has risen by 11 percentage points. A March 2013 survey conducted by the Pew Research Center found that the majority of Americans support legalization by a seven point margin – 52% to 45%.

The national trend to support marijuana legalization is consistent with recent polls in California, which also demonstrate a majority of residents support the concept. As of the date of publishing of this analysis, there are five recreational marijuana initiatives cleared for circulation by the Secretary of State; one measure relating to marijuana is pending title and summary with the California Attorney General. It is unclear whether or not the initiatives will be combined or will qualify for the ballot, however there is clearly an interest by Californians to submit a framework for recreational marijuana use for the approval of voters in 2016.

In order for any marijuana scheme – whether for recreational or medical purposes – to be effective, it should address all parts of the industry, including establishing a robust licensing and regulatory scheme, a taxation scheme, and incorporate health and safety standards, in addition to ensuring that the public is protected; however, if the measure is too prescriptive, it may hamper the ability to address any unintended consequences or fill in any policy gaps without having to go back to the ballot. As a result, if the State is able to create a comprehensive framework for medical marijuana, it may also serve a dual role by serving as a basis for a recreational marijuana scheme.

- 3) **OPPOSITION.** The Fresno Cannabis Association has an oppose unless amended position on this bill, stating this bill would institutionalize and potentially expand the existing patchwork of local jurisdictions that allow and prohibit medical cannabis cultivation and dispensing. The opposition states this bill, as currently written, will leave patients in Fresno County and the Central Valley, who are currently covered by the CUA, with no safe access to cannabis gardens, collectives, or dispensaries. The opposition further asserts that allowing cities and counties to opt out of any and all state regulations that are developed would be bad

public policy from a health perspective. The Fresno Cannabis Association states it will oppose this bill unless it is amended to prohibit local bans on medical cannabis dispensaries and/or cultivation.

**4) RELATED LEGISLATION.**

- a) AB 26 (Jones-Sawyer) establishes the Medical Cannabis Regulation and Control Act to regulate the cultivation, testing, transportation, distribution, and sale of medical cannabis. AB 26 is currently pending in the Assembly Business and Professions Committee.
- b) AB 34 (Cooley) would have created a comprehensive state licensing and regulatory framework for the cultivation, processing, distribution, testing, and sale of medical cannabis. AB 34 was held in the Assembly Appropriations Committee.
- c) AB 243 (Wood) establishes a new regulatory framework for MM cultivation, authorizing cities and counties to issue or deny a conditional permit for the cultivation of MM. Requires the State Water Resources Control Board to implement an identification program for the monitoring, tracking, and inspection of each MM plant. Imposes a tax on each MM plant to be deposited in the Marijuana Production and Environment Mitigation Fund to be allocated as specified. AB 243 is currently pending in the Senate Committee on Environmental Quality.
- d) AB 258 (Levine), Chapter 51, Statutes of 2015, prohibits the eligibility determination of a patient on the organ transplant waiting list from being based solely on his or her status as a qualified patient for MM, or based solely on a positive test for the use of MM by a qualified patient.
- e) AB 266 (Bonta) establishes a licensing and regulatory framework for medical cannabis under the Medical Cannabis Regulation and Control Act, and establishes the Office of Medical Cannabis Regulation within the Office of the Governor, the Division of Medical Cannabis Regulation within the BOE, the Division of Medical Cannabis Manufacturing and Testing within the DPH, and the Division of Medical Cannabis Cultivation within the CDFA, and would set forth the duties of the respective regulatory authorities. AB 266 is currently pending in the Senate Governance and Finance Committee.
- f) AB 730 (Quirk) provides that a conviction for transportation of marijuana, psilocybin mushrooms or phencyclidine requires proof of intent to sell, as is currently the case for cocaine, heroin and numerous other drugs. AB 730 is currently enrolled and pending review by the Governor.
- g) AB 821 (Gipson) exempts from sales and use taxes the gross receipts from the sale, storage, use, or other consumption of MM for consumption by a terminally ill patient, and requires the purchaser to provide an exemption certificate as provided. AB 821 is currently pending in the Assembly Revenue and Taxation Committee.
- h) AB 849 (Bonilla) makes it a felony for any person to extract THC or any other cannabinoids, by means of solvent extraction, from marijuana and cause an explosion resulting in great bodily injury, or damage to structures, property, or forest land. AB 849 is currently pending in the Senate Public Safety Committee.

- i) AJR 25 (Lackey) memorializes the President and Congress of the United States to support legislation that will provide a comprehensive solution to allow banks and credit unions to perform financial services for marijuana businesses. AJR 25 is currently pending in the Assembly Banking and Finance Committee.
- j) SB 165 (Monning) adds additional crimes or violations to an existing Fish and Game Code statute which authorizes civil fines for certain natural resource-related violations in connection with the production or cultivation of a controlled substance. SB 165 is currently pending in the Assembly Appropriations Committee.
- k) SB 303 (Hueso) permits the destruction of excess seized marijuana by law enforcement agencies, subject to specified evidentiary and preservation requirements. SB 303 is currently pending in the Assembly Public Safety Committee.

## 5) PREVIOUS LEGISLATION.

- a) AB 1894 (Ammiano) of 2014 would have established the Medical Cannabis Regulation and Control Act to regulate the cultivation, testing, transportation, distribution, and sale of medical cannabis. AB 1894 would have created the Division of Medical Cannabis Regulation in the Department of Alcoholic Beverage Control (ABC) and would have given ABC authority to register persons for specified activities relating to medical cannabis and to collect registration fees. AB 1894 was held on the Assembly Floor.
- b) SB 1262 (Correa) of 2014 would have created a licensing and regulatory framework for the cultivation, transportation, testing, and sale of MM, administered by the Bureau of Medical Marijuana Regulation in the Department of Consumer Affairs. SB 1262 was held in the Assembly Appropriations Committee.
- c) AB 473 (Ammiano) of 2013 would have created the Division of Medical Marijuana Regulation and Enforcement in order to regulate the cultivation, manufacture, testing, transportation, distribution, and sale of MM. AB 473 was held on the Assembly Floor.
- d) AB 604 (Ammiano) of 2013 was gutted and amended from a different subject matter and would have enacted the Medical Cannabis Regulation and Control Act. AB 604 was never heard by the Senate Public Safety Committee.
- e) AB 2312 (Ammiano) of 2012 would have established the Medical Marijuana Regulation and Control Act, authorizing local taxes on medical cannabis and creating a board to regulate the medical cannabis industry. AB 2312 was never heard by the Senate Committee on Business, Professions and Economic Development.
- f) AB 1300 (Blumenfield), Chapter 196, Statutes of 2011, provides that a local government entity may enact an ordinance regulating the location, operation or establishment of a MM cooperative or collective; authorizes local government entity to enforce such ordinances through civil or criminal remedies and actions; and authorizes a local government entity to enact any ordinance that is consistent with the MMP. AB 1300 did not directly regulate MM facilities.

- g) SB 626 (Calderon) of 2011 would have required the Board of Equalization (BOE) to establish a nine-member task force to conduct a study to determine ways to enhance collections of sales and use taxes on retail sales of marijuana and ensure proper regulation of the cultivation, transportation, and distribution of marijuana and marijuana products. SB 626 was held in the Senate Appropriations Committee.
  - h) AB 390 (Ammiano) of 2009 would have legalized the possession, sale, cultivation, and other conduct relating to marijuana and required ABC and enforce the terms of legalized marijuana. AB 390 was never heard by the Assembly Health Committee.
  - i) SB 1098 (Migden) of 2007 would have required the BOE to administer a tax amnesty program, for MM dispensaries, as defined. SB 1098 was never voted on by the Senate Revenue and Taxation Committee.
  - j) SB 420 (Vasconcellos) Chapter 875, Statutes of 2003, establishes the Medical Marijuana Program Act, a statewide, voluntary program for the issuance of identification cards to identify persons authorized to engage in the medical use of marijuana under the CUA.
  - k) Proposition 215, of the November 1996 General Election, prohibits prosecution for the possession and cultivation of cannabis by a patient or a patient's primary caregiver with a physician's written or oral recommendation.
- 6) **CHAPTERING OUT.** As currently written, this bill and AB 266, currently pending in the Senate Governance and Finance Committee, amend the same code sections. Amendments should be taken to avoid chaptering out conflicts, should both bills be enacted.
- 7) **AUTHOR'S AMENDMENTS.** The author is proposing a number of amendments to this bill. A portion of the amendments are technical cleanup language. Another part of the author's proposed amendments are in an effort to address some of the concerns brought up by the Assembly Business and Professions Committee, including clarifications to labeling and packaging requirements, an extension to the immunity provided to collectives and cooperatives prior to the issuance of conditional licenses, and the establishment of testing standards by the Office. The author's remaining proposed amendments eliminate references to city taxing authority, limit the length of time for which a conditional license may be renewed, and specify in the definitions that a licensed entity is one that is both conditionally licensed by the state and maintains a local license or permit. These changes are reflected in the mock-up associated with this analysis.
- 8) **TECHNICAL AMENDMENTS.** This bill establishes a statewide framework for the MM industry. However there are a number of instances in which this bill's provisions refer to marijuana rather than MM. The Committee may suggest amending this bill to ensure consistency throughout the language and uphold the intent of the author to address the MM industry, rather than influence recreational activity. This bill also regulates both MM and MM products, however the language does not consistently regulate both types of commodities. The Committee may suggest amending this bill to regulate MM and MMP, as relevant, consistently throughout the language. In addition, this bill's provisions contain references to definitions, such as "labor peace agreement," which are not used at all in the rest of the language. The Committee may suggest amending this bill to delete unnecessary definitions and clauses.

- 9) **RECOMMENDED AMENDMENTS.** This bill establishes a statewide regulatory structure for the MM industry from the ground up. In order to ensure this bill meets the original intent of the author, the Committee may suggest a number of amendments the author may want to consider to strengthen current provisions within the language.
- a) **Appointments by the Governor vs. civil service employees.** This bill requires the Governor to appoint the Chief, subject to confirmation by the Senate Committee on Rules. The Chief is then required to serve in accordance with State Civil Service Act. Under existing law, civil service employees cannot be subject to confirmation by the Legislature. This bill grants the Chief with the great authority to enforce and administer the Act, and adopt and enforce all rules and regulations necessary to implement the Act. As such, the Committee may suggest amending this bill to strike provisions requiring the Chief to be a civil service employee and maintain provisions requiring the Governor to appoint the position, subject to confirmation by the Senate, as is customary with similar positions appointed by the Governor.
- b) **Availability of records.** This bill requires records of all facilities issued conditional licenses and authorizes access to those records by state and local law enforcement. However, state and local agencies, other than law enforcement, may need to access these records in order to properly perform their duties to enforce the chapter. The Committee may suggest amending this bill to allow state and local agencies equal access to the records of all facilities issued conditional licenses.
- c) **Organic marijuana.** This bill requires, no later than January 1, 2022, for all MM grown, produced, distributed, and sold in the state to meet certified organic standards. Organic is a labeling term that indicates that the food or other agricultural product has been produced through approved methods. In order to sell, label, or represent their products as organic, operations must follow all of the specifications set out by the USDA organic regulations. As marijuana is currently listed as a Schedule I drug under federal law, the USDA does not recognize marijuana has a legal crop, and therefore cannot certify marijuana as organic. The Committee may suggest amending this bill to require all MM under this Act to meet standards equivalent to those for certified organic products, as certified by the Office or an independent third party.
- d) **Exemption for the City of Los Angeles.** The author indicates the intent of this bill is to provide comprehensive regulations for the MM industry throughout the state, yet this bill currently leaves a large loophole within the framework of the regulatory structure. This bill exempts all marijuana businesses and dispensaries subject to Measure D, approved by the voters of the City of Los Angeles on the May 21, 2013 ballot for the city, from the regulations and provisions of this bill. Measure D grandfathered existing medical marijuana businesses and dispensaries but does not allow the City to license the businesses or allow new businesses.

In addition, as currently written, this bill does not provide any means for the state to track MM and MM products to ensure that they are not being illegally diverted into or out of the City of Los Angeles. This bill also limits entities holding a license from the state to engaging in MM activity only with entities that also hold a license from the state. Accordingly, any entity that holds a license from the state that engages in MM activity with an entity within the City limits is thereby participating in illegal activity.

Measure D prevents the City of Los Angeles from issuing licenses to MM businesses; however nothing prohibits the state from issuing its own licenses to qualifying applicants from the City. The Committee may suggest amending this bill to allow the Office to issue licenses to those MM businesses that are legally allowed to operate within the City of Los Angeles, and make appropriate changes to ensure these businesses are required to follow all requirements of the Act, in order to close gaps in protections currently created by the language.

- e) **Suitability for licensure.** This bill provides for a conditional license to be denied, suspended, or revoked for a past felony conviction for the possession for sale, manufacture, transportation, or cultivation of a controlled substance, or a felony criminal conviction for drug trafficking, among others. However, this bill exempts, as a reason for denial of licensure, a prior conviction for a felony that was committed after the enactment of the CUA, but which would not be a felony after the enactment of this bill. This bill does not change any existing felonies or constitute resentencing, but instead provides that the actions of a licensee, in compliance with the law and its regulations, are not in and of themselves unlawful. The Committee may wish to consider that it would not be possible for the actions committed by individuals prior to the existence of a licensing scheme to be in full compliance with the Act, as full compliance requires licensure, and suggests amending this bill to clarify the intent.
- f) **Talking straight with consumers.** This bill requires advertisements for physician recommendations to bear a notice to consumers that educate consumers on the intent of the CUA and physician credentials. The requirement of a consumer notice implies there is a need to warn them about issues related to MM recommendations. Yet the notice is silent on the fact that marijuana is currently listed as a Schedule I drug in the CSA, and federal officials still have the authority to prosecute against individuals, with the authority to charge felonies, for engaging in marijuana-related activities. The Committee may suggest amending this bill to clarify to consumers that they are still subject to prosecution by the federal government for marijuana-related activities, even if recommended marijuana by a physician.
- g) **Tax provisions.** This bill authorizes counties to impose specified taxes on MM licensees within their jurisdictions. As currently written, the language does not specify the types of taxes that may or may not be imposed, and provides limited flexibility in methods for the collection of taxes. Additional clarity is also needed as to the location of which the tax applies. The Committee may suggest amending this bill to appropriately clarify these provisions.
- h) **Enforcement by the Office.** The bill authorizes civil penalties but does not allow them to be levied administratively. Allowing the office to levy penalties after an administrative proceeding should make carrying out enforcement actions considerably easier. The Committee may suggest amending this bill to explicitly allow the office to conduct administrative enforcement actions.
- i) **Medical records.** This bill requires the Office to ensure the confidentiality of patient information that it keeps for administrative purposes. Existing law provides extensive protections to patient medical records. In order to ensure full safeguards are guaranteed to MM patients, the Committee may suggest amending this bill to require all patient

records to be held and protected by the Office in accordance with existing state and federal law.

- j) **Equal mandates for licensees.** This bill requires a licensed cultivation site to display the state license in a manner so as to be available and easily read at the location; this signage requirement is not mandatory for other licensees. The Committee may suggest amending this bill to have signage, and all other relevant, mandates applied consistently to all licensees.
- k) **Edible MM facilities.** This bill provides some requirements for licensed facilities that manufacture edible MM products, yet does not require these facilities to follow any statutory requirements of other food facilities. Existing law requires food facilities to abide by laws within the California Retail Food Code, which was established to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented through adoption of science-based standards. Licensure as a MM facility that conducts business with food should not exempt these facilities from standards required for non-MM food facilities. The Committee may suggest amending this bill to clarify MM facilities are not exempt from relevant health and safety standards, and require all licensed food-related MM facilities to abide by standards and regulations equivalent to those in the California Retail Food Code.

**10) POLICY COMMENTS.** This bill establishes a licensing and regulatory scheme for MM, from cultivation to retail. This bill creates a new state agency, directing it to promulgate, implement, and enforce all necessary rules, regulations, and standards for the Act. As this bill creates a structure for an entirely new industry, there are a number of outstanding issues that the Committee should consider addressing in order to ensure the success of the regulatory scheme, should this bill be enacted into law.

- a) **Hazy definitions.** This bill requires individuals who intend to engage in MM activity within the state to apply to the Office for a license from the state. This bill's provisions refer to the license acquired from the state as a conditional license. However, the term "conditional" is a misnomer. All licenses issued by the state are conditional by nature; the privilege of holding any license from the state is conditioned upon following the laws relevant to that license. For example, individuals who hold a driver's license only maintain their license if they follow the state's rules of the road. Thus the Committee may wish to consider if the language should be amended to clarify references to licenses.

This bill also establishes requirements for all applicants for licensure by the state. However it is unclear whether a licensee can be either a person or a facility; the requirements for an applicant appear to refer to a person, yet other bill provisions refer to both licensed individuals and licensed facilities. The Committee may wish to consider clarifying this bill's provisions to explicitly define what entities or persons can qualify for licensure under the Act.

- b) **One agency vs. multiple agencies.** This bill builds a new state office from the ground up, and tasks it with establishing, implementing, and enforcing standards and regulations for an entirely new industry within the state; thus this bill creates a regulatory structure unlike any other for a single agricultural product. The establishment of a brand new state office is highly resource-intensive in terms of time, labor, and cost. The state currently



regulates and enforces non-MM industries using multiple agencies that specialize in specific parts of each industry. The Committee may wish to consider whether it is appropriate to task one office with all of the responsibilities set forth in this bill or if it would be more appropriate to spread out the responsibilities among existing agencies that already have expertise in promulgating, implementing, and enforcing similar regulations as those required by this bill.

- c) **Getting advice from experts.** This bill requires the Office to promulgate a myriad of regulations and standards to implement this Act. Given the breadth of experience and the significant resources that will inevitably be necessary to promulgate and enforce the rules, standards, and regulations required by this bill – from standards for health and safety to best practices for environmentally-friendly cultivation – the Committee may suggest amending this bill to require the Office to convene an advisory committee to provide the Office with necessary expertise from stakeholders in the MM industry, assist with the promulgation of regulations, and provide technical assistance regarding implementation and enforcement of the Act. The Committee may suggest the advisory committee be comprised of gubernatorial and Legislative appointments including, but not limited to, representatives from local and state agencies, public health and environmental experts, patient advocates, physicians, MM industry experts, and law enforcement.
- d) **The Office: Good cop and bad cop.** This bill requires the Office to promote the MM industry by upholding the CUA and recognizing marijuana as a medicine to patients. Simultaneously, the Office is charged with establishing protections, collecting fees, and otherwise enforcing the provisions of the Act. The responsibilities of both promoting and enforcing the MM industry are inherently contradictory; it is unlikely that any single entity would be able to meet the obligations of both at equal standards or with equal efficiency. The Committee may wish to consider the ability of the Office to perform both sets of responsibilities equally as well, and the potential consequences of it meeting the duties of one more than the other.
- e) **Implementation challenges.** This bill leaves nearly all of the administration of the Act to the rulemaking process by requiring the Office to promulgate a multitude of regulations rather than providing a clear, statutory framework. In general, the role of state agencies is to implement policies that are enacted by the Legislature, rather than determine what those policies should be. The process of promulgating regulations by a state agency can be time-consuming depending on the complexity of the issue, and given requirements for notification, public comment, and additional delays that arise when amendments to proposed regulations are made. Furthermore, the regulatory process has been criticized heavily for lacking the transparency and robust stakeholder input that the legislature process allows for. As such, the Committee may wish to consider whether or not it is in the best interest of the state to delegate all rulemaking to the Office, or to instead provide basic fundamental standards and guidelines, which the Legislature can have a voice in crafting, within this bill's provisions.
- f) **Protections against poorly-performing locals.** As currently written, this bill does not provide protections against local jurisdictions that do not have proper standards within their local ordinances or fail to adequately enforce local and state standards. For example, if locally licensed cultivation site is polluting the areas, should not the Office be able to act? The Committee may wish to consider if the provisions of this bill provide

adequate protections against local ordinances or enforcement actions that do not meet the principles intended by the Office or this bill.

- g) Protections for existing MM businesses.** This bill does not provide any protections for existing MM businesses from January 1, 2016, the date this bill would become enacted, through June 30, 2018, the date before the Office is required to begin issuing licenses. As such, state and local agencies could potentially take civil and criminal actions against MM businesses during this timeframe. It is an unusual circumstance to subject an entity to civil and criminal penalties for an activity that will be legal in three years. The Committee may wish to consider amending this bill to address this concern.
- h) Sufficient environmental protection?** This bill establishes the Medical Marijuana Public Safety and Environmental Protection Act, and declares that all efforts must be made to prevent and mitigate the harmful environmental impacts that can be associated with some marijuana cultivation. Furthermore, the author points to the negative effects that the lack of regulations on the MM industry has had on the environment, particularly in California's northern counties. Yet this bill is silent on specific standards that conditional licensees must meet and abide by to ensure environmental protections with regard to MM cultivation. The Committee may wish to consider whether or not this bill provides sufficient guidelines and standards to ensure adequate environmental protections regarding MM activity to meet the bill's original intent.
- i) Adequate consumer protection?** This bill currently lacks guidelines on consumer protections. Of particular concern is the absence of guidelines for strict testing standards and regulations, which could potentially threaten the health of patients if not thoroughly articulated by the Office. This bill also does not expressly prohibit an individual from obtaining a license for both testing and any other license type. Without an explicit prohibition on the ability for an individual to hold a testing license in conjunction with any other license type, the language provides a loophole to the regulatory structure which could negatively impact health and safety protections for patients. The Committee may wish to consider, given the severity of the negative impacts the lack of regulation has had on the state, whether it is appropriate to provide no guidance to the Office and other responsible entities in this bill on the standards required by this bill.

The one notable exception to the lack of guidance by this bill's provisions is in the area of edible MM products; this raises the question of why minimum standards have been provided in the language for these commodities, but have not been established for other commodities, such as those developed by extraction methods, which contribute to one of the fastest growing sectors within the MM market.

- j) Whistle blowing or just indiscrete?** This bill declares that nothing prevents an Office employee from disclosing information, including that related to fraud or violations of the Act, to state or local agencies. Oftentimes investigations of illicit activity require certain confidentiality so as to not compromise the entire operation. The Committee may wish to consider the appropriateness of granting Office employees the right to release information that could be confidential and relevant to an investigation, particularly to other state and local agencies that are not related to law enforcement.

Furthermore, although this bill allows for Office employees to act as whistle blowers, it currently offers no protections to those who do. If this ability to disclose is important, the

Committee may wish to consider amending the bill to provide sufficient protections to individuals who provide more transparency or information to authorities in specified circumstances.

- k) Limited state revenues.** This bill currently only provides revenue to the state by depositing penalties imposed upon non-compliant individuals into the GF. Although the language allows the Office to assist state taxation authorities to develop policies for state taxation, it does not explicitly provide for a state tax. The MM industry currently generates millions of dollars, with some industry supporters estimating it has the potential to produce billions of dollars in the future. The Legislature is granting local governments the first crack at taxing this revenue base. The Committee may wish to consider amending this bill to impose a state tax in the regulatory structure to provide the state with much needed monies to the GF.
- l) Geographic branding for marijuana.** This bill requires the Office to establish appellations of origin for marijuana grown in California. An appellation of origin is a geographic indication, generally consisting of a geographical name or a traditional designation, used on products which have a specific quality or characteristics that are from the geographic environment in which they are produced. Consumers are familiar with these products and often request them using their geographical name. Common examples include food and beverages such as Gruyère cheese, Champagne, and Tequila, all of which are products named for their origin, and they enjoy legal protection for their names and reputations. Geographic branding is rarely used for medical products, if at all. In addition, appellation systems are used throughout the world and require laborious standards and enforcement. The Committee may wish to consider the feasibility and need for the Office to create and enforce a system to brand a medical product based on its geographic origin.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file.

##### **Opposition**

Fresno Cannabis Association

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