

Date of Hearing: August 26, 2015

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Jimmy Gomez, Chair

SB 643 (McGuire) – As Amended August 18, 2015

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| Policy Committee: | Business and Professions | Vote: | 8 - 2 |
| | Health | | 11 - 2 |

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill creates a state licensing and regulatory framework for medical marijuana. The bill includes provisions related to licensure; health and safety standards, which include testing and labeling; record-keeping; security; transportation; taxation; certification of employees; and physician recommendation and advertising. Specifically, this bill:

- 1) Establishes parameters related to medical recommendation of marijuana, requiring the Medical Board to prioritize for investigation repeated acts of recommending marijuana for medical reasons and adopt medical guidelines for its administration and use, and prohibiting a physician from recommending marijuana unless the person is a patient's "attending physician," as defined by the Compassionate Use Act.
- 2) Exempts from licensure a patient who cultivates or possesses marijuana for personal medical use, or a primary caregiver who cultivates, possesses or provides marijuana to no more than five patients, as specified.
- 3) Establishes the Office of Medical Marijuana Regulation Office within the Business, Consumer Affairs, and Housing Agency, to enforce its provisions. Requires the Office, by January 1, 2018, to promulgate regulations for implementation and enforcement, as specified.
- 4) Requires the Office to convene an advisory committee, as specified, to advise on the development of standards and regulations.
- 5) Specifies protection of the public and preserving patient access to medical marijuana are the highest priorities.
- 6) Requires various licensee records to be kept in a database, and made available with 24-hour access to information upon request.
- 7) Creates the fee-based Medical Marijuana Regulation Fund and the Special Account for Environmental Enforcement; specifies all penalties are deposited into the GF; and authorizes the Office to administer a grant program to allocate funds to state and local entities to assist with administration and enforcement.
- 8) Authorizes the Office to issue, suspend, and revoke licenses for marijuana cultivation, manufacture, transportation, storage, distribution, testing, and sale of medical marijuana within the state, and to collect related licensing fees.

- 9) Establishes a tiered licensing scheme, depending on size, complexity, and type of license, for cultivation, manufacturers, dispensing facilities, distributors, and testing entities.
- 10) Requires the California Department of Food and Agriculture (CDFA) to develop an organic designation or its equivalent, and to establish appellations of origin for marijuana grown in California.
- 11) Prohibits unlicensed activity. Makes licensees subject to local jurisdiction restrictions, including prohibitions on operation. Requires local permits and state licenses in order for a business to operate. Specifies existing businesses can operate until a license is approved or denied.
- 12) Specifies medical marijuana transportation requirements, including secure vehicles and minimum staffing.
- 13) References, but does not explicitly allow, unlicensed activity in the City of Los Angeles.
- 14) Requires licensed facilities to implement specified security measures, including access, storage, and inventory controls.
- 15) Authorizes boards of supervisors to impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical marijuana or medical marijuana products by a licensee, and provides it is declaratory of existing law.
- 16) Requires a tracking program be in place prior to commencement of licensure.
- 17) Establishes food safety, potency, and labeling standards for edible marijuana products.
- 18) Requires the Office to promulgate standards for certification of testing laboratories to perform random sample testing of all medical marijuana products, and to certify testing laboratories.
- 19) Requires the Division of Labor Standards Enforcement in the Department of Industrial Relations (DIR) to develop competency and training certification standards for cultivation and dispensing employees.
- 20) Makes willful violations of this act punishable by a civil fine of up to \$35,000. Technical violations are punishable by fines of up to \$10,000.
- 21) Requires the California Highway Patrol (CHP) to conduct research to determine whether a driver is operating a vehicle under the influence of cannabis, and to assist law enforcement agencies to establish best practices. Funds this activity through the fines and penalties account.
- 22) Specifies funds for the establishment and support of the Office shall be advanced as a loan from the General Fund, and shall be repaid by the initial proceeds from fees.

FISCAL EFFECT:

Costs/Fees:

- 1) Significant one-time costs in the range of \$25 million (GF loan) to establish the Office, basic structure, information technology infrastructure, and regulations. The bill specifies startup costs for establishment of the bureau are to be advanced as a loan from the General Fund.
- 2) Annual costs, conservatively around \$20 million and potentially exceeding \$50 million (Medical Marijuana Regulation Fund), to maintain the Office within the Agency to regulate the medical marijuana industry.

As a comparison, the budget of the Department of Alcoholic Beverage Control (ABC) is approximately \$60 million and 450 positions. The ABC is charged with licensing and regulating persons and businesses engaged in the manufacture, importation and distribution of alcoholic beverages, and administering the provisions of the ABC Act to protect the health, safety, welfare and economic well-being of the state. In addition, the ABC Appeals Board has a \$1 million budget.

Based on funding and staffing levels of the ABC, and considering the complexities of the undertaking and the significant start-up costs of any new entity (adoption of regulations and fee schedules, office equipment and expenses, etc.), it appears reasonable to assume the costs of providing statewide regulation for cultivation, manufacture, testing, transportation, distribution, and sale of medical marijuana, along with associated hearings, appeals, litigation and enforcement, would conservatively be in the range of 35% of the ABC budget.

- 3) This bill establishes unspecified registration fees. The costs of creating and maintaining the Office, as specified, would require significant application fees. For purpose of illustration, the average fee to cover the cost of a \$20 million entity, if there were 5,000 annual applications, would be \$4,000 per application.
- 4) Unspecified revenues related to marijuana cultivation based on an additional fee assessment, distributed to the Account to State Water Resources Control Board, the Department of Fish and Wildlife, the Department of Forestry and Fire Protection, the Department of Pesticide Regulation, and the Department of Food and Agriculture to support enforcement of environmental regulation.
- 5) One-time costs potentially exceeding \$100,000 (Contingent Fund of the Medical Board of California) to issue medical guidelines related to marijuana. Ongoing costs to the California Medical Board for investigating physicians who overprescribe marijuana should be minor and absorbable.
- 6) Minor ongoing costs to DOJ for background checks, covered by applicant fees.
- 7) Litigation costs to DOJ to defend the office, estimated in the range of \$10 million. Costs would be reimbursed by DCA, presumably with applicant fee revenue, if sufficient.
- 8) One-time costs to DIR to certify cultivation and dispensing employees in the range of \$1 million (GF), and \$900,000 annually ongoing (Medical Marijuana Regulation Fund).
- 9) One-time costs to the Office, likely in the range of millions, as well as costs in a similar range ongoing, to certify laboratories for testing of marijuana (Medical Marijuana Regulation Fund).

- 10) Unknown, potentially significant non-reimbursable local law costs for enforcement of medical marijuana regulation.

Tax and penalty revenue:

- 1) Unknown moderate local revenue increase, potentially in the millions of dollars, from a permissive and unspecified local tax.
- 2) Unknown GF revenue from fines of up to \$35,000 for willful violations and up to \$10,000 for technical violations of the act.

COMMENTS:

- 1) **Purpose.** 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 medical marijuana; however, there are growing issues and concerns for many stakeholders. For instance, he notes 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 concludes this bill contains provisions necessary to recognize the voters' mandate of Proposition 215 and streamlines the ability of the medical marijuana industry to grow and sell a legal product.
- 2) **Current Medical Marijuana Law.** Possession and sale of marijuana is a crime under federal law, and federal law preempts state law. California patients who obtain a physician's recommendation are protected from prosecution for possessing or cultivating an amount of cannabis reasonably related to their current medical needs, as are patients' caregivers. Patients and caregivers who obtain a state Medical Marijuana Program (MMP) identification card from their county health department are protected from arrest and prosecution for possessing, delivering, or cultivating cannabis. Patients and caregivers who engage in these activities, however, remain liable to federal arrest and prosecution, and those who operate dispensaries face frequent federal enforcement actions. A brief history of relevant law is below:
 - a) In 1996, California voters passed Prop 215, the Compassionate Use Act (CUA), which prohibits prosecution for growing or using marijuana if a person has an oral or written recommendation of a physician.
 - b) In 2003, SB 420 (Vasconcellos, Statutes of 2003), the Medical Marijuana Program Act, created a voluntary identification card that patients and caregivers could obtain to protect them from arrest, and limited the amount of marijuana that could be legally grown and possessed.
 - c) In 2005, the U.S. Supreme Court ruled in *Gonzales v. Raich* (2005) that the federal government can enforce marijuana prohibitions despite state medical marijuana law.

- d) In 2010, the CA Supreme Court ruled in *People v. Kelly* that the MMP section limiting quantities of cannabis is unconstitutional because it amends a voter initiative.
- e) In 2013, the CA Supreme Court held medical marijuana statutes do not preempt a local ban on facilities that distribute medical marijuana, and that municipalities may prohibit such conduct as a public nuisance (*City of Riverside v. Inland Empire Patient's Health & Wellness Center*).
- f) Also in 2013, the U.S. Department of Justice (USDOJ) issued guidance that stated, "*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 federal priorities which include the most significant public threats, including disrupting gang and cartel activities, preventing revenue diversion, etc. DOJ states where strong state and local regulatory systems exist, "*enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity.*" California is the only state that permits medical marijuana in the absence of a robust statewide regulatory system; half of all states have some such system.

3) Comments.

- a. **Organizational Structure.** This bill places significant authority in a newly created Office within an existing state agency. The duties of the office will include promulgating regulations, contracting for a significant information technology project that will meet the bill's requirements, developing licensure programs and processes, conducting licensure and enforcement activities. The licensed entities are disparate, from farms to laboratories to retail outlets. While there is value in centralizing control and accountability, such a structure may fail to leverage existing state expertise and lead to a misalignment of duties by placing only those specific to marijuana in a stand-alone entity. For example, California Department of Public Health (CDPH) would be in the business of licensing all laboratories in the state, *except* for those dealing with marijuana testing, even though presumably they may have existing regulatory relationships with same laboratories for other non-marijuana activities. CDPH has existing infrastructure for doing this activity, including regulatory expertise, technical field staff, fee collection infrastructure, and other assets that could be leveraged.

An alternative approach would be to combine a central entity with the ability to leverage existing expertise. For example, a bill could assign duties to appropriate existing agencies but play a coordinating role. Or, a bill could require a central coordinating Office to issue all regulations, but allow the Office to contract via interagency agreement with CDPH and CDFA or other appropriate entities for actual licensure and enforcement activities. Staff could work within CDPH but under an interagency agreement with the Office, in order to maintain a higher level of accountability for the overall regulatory structure and prevention of diversion to the black market. There are a number of organizational options, but more flexibility may offer some benefits.

In addition or alternatively, a centralized Office could be set up initially, in order to ensure consistency in the promulgation of regulations and operations, with the intent that program activities could be spun off from the centralized office once start-up activities are complete and regulatory programs are robust.

Inserting a sunset date on the operation of the office would provide a natural opportunity for the Legislature and administration to reconsider whether the chosen approach is still the right one after start-up activities are completed.

- b. **Fiscal comments.** The bill should specify that licensure fees can be scaled based on size and regulatory complexity. In addition, the fee revenue for different license types is not differentiated. This may result in cross-subsidization between licensure categories. Regulatory fees that are out of proportion to the cost of regulation may confer legal risks that fees are impermissible, and as a matter of principle they should be scaled according to regulatory costs. Staff suggests greater differentiation between categories to ensure licensees are fairly charged.

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