

Date of Hearing: July 7, 2015

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Susan Bonilla, Chair

SB 643(McGuire) – As Amended June 3, 2015

**SENATE VOTE:** 26-13

**SUBJECT:** Medical marijuana

**SUMMARY:** Establishes a comprehensive licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana to be administered by the Office of Medical Marijuana Regulation within the Business, Consumer Services, and Housing Agency.

**EXISTING LAW:**

- 1) Recognizes the authority of cities and counties to make and enforce, within their borders, all local, police, sanitary, and other ordinances and regulations not in conflict with general interest laws. (Cal. Const. Article XI sec. 7)
- 2) Prohibits the possession, possession with intent to sell, cultivation, sale, transportation, importation, or furnishing of marijuana, except as otherwise provided by law. (Health and Safety Code (HSC) Sections 11357, 11358, 11359, and 11360)
- 3) Prohibits prosecution of a patient or a patient's primary caregiver, under the Compassionate Use Act of 1996 (CUA), an initiative measure, for possessing or cultivating marijuana for personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. (HSC Section 11362.5)
- 4) Licenses and regulates physicians and surgeons, including osteopathic physicians, under the Medical Practice Act (Act) by the Medical Board of California (MBC) within the DCA. (Business and Professions Code (BPC) Section 2000 *et seq.*)
- 5) Defines "attending physician" as an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California (MBC) or the Osteopathic Medical Board of California (OMB) and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate. (HSC Section 11362.7(a))
- 6) Defines "primary caregiver," for purposes of the CUA, as the individual designated by a patient who has consistently assumed responsibility for the housing, health, or safety of that person. (HSC Section 11362.7(d))
- 7) Requires the California Department of Public Health to establish and maintain a voluntary Medical Marijuana Program for qualified patients to apply for identification cards, and county health departments to issue identification cards to qualified patients and their caregivers. (HSC Section 11362.7 *et seq.*)

- 8) Provides that qualified patients, persons with valid identification cards, and their designated primary caregivers who associate in order to collectively or cooperatively to cultivate marijuana, are not subject to criminal liability solely on that basis. (HSC Section 11362.775)

## **THIS BILL:**

### **Administrative Provisions**

#### 1) Defines the following terms:

- a) "Licensed cultivation site" as a facility that plants, grows, cultivates, harvests, dries, or processes medical marijuana and that is issued a conditional license.
- b) "Licensed dispensing facility" as a dispensary or other facility that provides MM, MM products, or devices for the use of medical marijuana or medical marijuana products that is issued a conditional license.
- c) "Licensed manufacturer" as a person who extracts, prepares, derives, products, compounds, or repackages medical marijuana or medical marijuana products into consumable and nonconsumable forms and that is issued a conditional license.
- d) "Licensed transporter" as an individual or entity issued a conditional license to transport medical marijuana to and from facilities that have been issued conditional licenses or medical marijuana products above a quantity limit, as specified.

#### 2) Establishes the Office of Medical Marijuana Regulation (Office) in the Business, Consumer Affairs, and Housing Agency, under the supervision and control of the Chief of the Office.

- a) Provides the Office with the authority to issue, suspend, or revoke conditional licenses for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana in the state and to collect fees in connection with these actions, and to create, issue, suspend, or revoke other licenses in order to protect patient health and the public and to facilitate the regulation of medical marijuana.
- b) Requires the Chief to be appointed by the Governor, subject to Senate confirmation.
- c) Requires funds for the establishment and support of the Office to be advanced as a loan from the General Fund, to be repaid by the initial proceeds from fees collected pursuant to this bill or any regulations adopted by this bill.

#### 3) Provides the Office with the authority to implement this bill, including the authority to:

- a) Establish necessary rules and regulations, in accordance with the Administrative Procedure Act, and subject to local control, as specified.
- b) Set application, licensing, and renewal fees for conditional license.
- c) Establish standards for the cultivation, manufacturing, transportation, storage, distribution, provision, donation, and sale of medical marijuana and medical marijuana products.

- d) Establish procedures for the issuance, renewal, suspension, denial, and revocation of conditional licenses.
  - e) Enforcing the licensing and regulatory requirements of this bill, subject to provisions of the bill specifying enforcement.
  - f) Imposing a penalty authorized by these provisions or any regulations adopted pursuant to these provisions.
  - g) Taking action with respect to an application for a commercial license, as specified.
  - h) Overseeing the operation of the Medical Marijuana Regulation Fund and the Special Account for Environmental Enforcement, as specified.
  - i) Consulting with other state or local agencies, departments, representatives of the medical marijuana community, or public or private entities for the purposes of establishing statewide standards and regulations.
- 4) Requires the Office, on or before January 1, 2018, to promulgate regulations for implementation and enforcement, including:
- a) Procedures for the issuance, renewal, suspension, denial, and revocation of conditional licenses.
  - b) Procedures for the appeal of fines and the appeal of denial, suspension, or revocation of conditional licenses.
  - c) Application, licensing, and renewal forms and fees.
  - d) A time period in which the Office shall approve or deny an application for a conditional license.
  - e) Qualifications for licensees.
- 5) Requires the Office, in consultation with the Division of Labor Standards Enforcement, to adopt regulations establishing worker safety standards for licensed entities.
- 6) Prohibits the Office from issuing a conditional license unless the applicant meets all application requirements, as specified, and has demonstrated compliance with all applicable agricultural, consumer protection, food and product safety, and environmental requirements, including applicable water quality standards.
- 7) Requires the Chief to keep a complete record of all facilities issued a conditional license, which shall be made available on the Office's website.
- a) Prohibits the Office from disclosing sensitive information, including the address or location of cultivation sites.
  - b) Requires the Office to provide summary information on all licensees including the name, the date the license was issued, the status of the license, and the licensee's mailing address.

- c) Requires the Office to establish procedures to provide state and local law enforcement, upon their request, with 24-hour access to information to verify a conditional license, track transportation manifests, and track the inventories of facilities issued a conditional license.

### **Immunity and Exemptions**

- 8) Provides that these provisions do 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, or any similar measure in other jurisdictions, which grants medical marijuana businesses and dispensaries qualified immunity consistent with the terms of the measure and local ordinances, as specified.
- 9) Exempts from these provisions:
  - a) Patients who cultivate, possess, store, manufacture, or transport marijuana exclusively for his or her personal medical use and who do not sell, distribute, donate, or provide marijuana to another person or entity.
  - b) Primary caregivers who cultivate, possess, store, manufacture, or transport marijuana exclusively for the personal medical use of no more than five qualified patients and who do not receive remuneration for these activities, except as specified.
- 10) After July 1, 2017, no longer exempts patients and primary caregivers who engage in medical marijuana activities collectively or cooperatively from criminal prosecution, and instead extends that criminal immunity to an individual employee, officer, or board member of a facility issued a conditional license, as specified.

### **Conditional Licensing Provisions**

- 11) Prohibits the sale or provision of medical marijuana to a patient or caregiver other than through a licensed dispensing facility or delivery from a licensed dispensing facility; the growth of medical marijuana other than at a licensed cultivation site; the manufacturing of medical marijuana or medical marijuana products other than by a licensed manufacturer; and the transportation of medical marijuana other than from one licensed facility to another. Authorizes a licensed manufacturer to obtain medical marijuana from a licensed cultivator, and to furnish medical marijuana to a licensed dispensary.
- 12) Requires the Office, no later than July 1, 2018, to provide for and issue conditional licenses, which are required for all activities, including cultivation, processing, storage, transport, and dispensing of medical marijuana.
- 13) Provides that the issuance of a conditional license does not authorize a recipient to begin business operations, and instead only certifies that the applicant has paid the state license fee, successfully passed a criminal background check, and met the state residency requirements.
- 14) Prohibits a conditionally licensed facility from commencing activities until the applicant also obtained a license or permit from a local jurisdiction in which he or she proposed to operate, following the requirements of local ordinances.

15) Requires an applicant to do the following:

a) Pay the fee and register on forms prescribed by the Chief, and provide the following information:

i) Name of all persons or entities having an ownership interest, as specified, and the name, address, and date of birth of each principal officer and board member.

ii) Address and telephone number of the facility, and for cultivation sites, the GPS coordinates.

b) Describe the scope of business.

c) Provide evidence that the applicant and the owner have been legal full-time residents of the state for not less than 12 months.

d) Provide detailed operating procedures, including procedures for facility and operational security; prevention of diversion; employee screening; storage of MM; personnel policies; and recordkeeping procedures.

e) Provide evidence that the applicant has received all required environmental permits, including compliance with the California Environmental Quality Act and wastewater discharge permits.

f) Provide the applicant's fingerprint images, as specified.

g) Provide a statement signed under penalty of perjury that the information provided is true.

16) Requires each location and discrete use of a single location to obtain a conditional license, and provides that each application for a conditional license is separate and distinct.

17) Provides that a conditional license is valid for 12 months, and after the initial 12-month period, may be renewed for a period of 36 months.

18) Prohibits the Office from issuing a conditional license to a person or entity against whom there is a pending enforcement case under a local ordinance, or who has been determined to have violated an applicable local ordinance, as specified.

19) Authorizes a facility or entity that is operating in conformance with local zoning ordinances and other requirements on the effective date of this bill to continue its operations until its application for conditional licensure is approved or denied.

20) Authorizes the Office to issue a conditional license and send proof of issuance to an applicant, provided the applicant has not committed an act or crime constituting grounds for the denial of licensure. Requires the Chief, by regulation, to prescribe conditions upon which a person, whose conditional license has previously been denied, suspended, or revoked, may be issued a conditional license.

21) Requires an application for a conditional license to be denied, and a conditional license suspended or revoked, for a past felony conviction for the possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, a felony criminal

conviction for drug trafficking, a felony conviction for embezzlement, a felony conviction involving fraud or deceit, or any violent or serious felony conviction, as specified.

- 22) Provides that a conditional license shall not be denied solely on the basis of a prior conviction for a felony that was committed after the CUA, but which would not be a felony after the enactment of this bill.
- 23) Authorizes the Chief to deny, suspend, or revoke a conditional license when a conditional licensee, applicant, or employee, partner, officer, or member of an entity conditionally licensed for specified reasons such as: making untrue or misleading statements; engaging in conduct that constitutes fraud or gross negligence; failing to comply with these provisions or any rule or regulations adopted pursuant to these provisions; or conduct that constitutes grounds for denial of a license pursuant to the Business and Professions Code, as specified.
- 24) Sets the following as reasons a conditional license shall not be approved:
- a) The applicant fails to meet requirements of this bill or has had an applicable permit or license revoked or denied by an applicable city, county, or city and county agency. States that if a local government adopts an ordinance or resolution authorizing MM to be cultivated, manufactured, stored, distributed, or sold within its jurisdiction, it shall submit to the Office documentation detailing their renewal requirements.
  - b) The applicant, or any of its officers, directors, owners, members, or shareholders, is a minor.
  - 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 applicant, or any of its officers, directors, owners, members, or shareholders has been sanctioned by the Office, a city, county, or city and county, for MM activities conducted in violation of this part or any applicable local ordinance or has had a license revoked in the previous five years.
  - e) The proposed cultivation, processing, possession, storage, manufacturing, testing, transporting, distribution, provision, or sale of medical marijuana will violate any applicable local law or ordinance.
  - f) The applicant or the owner is unable to establish that he or she has been a resident of the state for at least 12 months.
- 25) Specifies that a conditional license is subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate. Clarifies that even if a conditional license has been granted pursuant to this part, a facility shall not operate in a local jurisdiction that prohibits the establishment of that type of business. Specifies that local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are conditionally licensed and the business activities of those licensees.
- 26) Authorizes the Office to adopt regulations to limit the number of conditional licenses issued upon a finding that the otherwise unrestricted issuance of conditional licenses is dangerous to the public health and safety.

**Fee Provisions**

- 27) Sets the conditional licensing fee at a level sufficient to fund the Office's administrative costs (in overseeing the licensing program, in establishing health and safety standards and in certifying testing laboratories), costs incurred by the Office, the Department of Justice, law enforcement, and other public safety entities for enforcing these provisions.
- 28) Requires a cultivation facility fee to be assessed, in addition to a conditional licensing fee, set at an amount sufficient to cover the reasonable regulatory costs of enforcing environmental impact provisions of cultivation facilities. Requires this fee to be distributed between the State Water Resources Control Board, Department of Fish and Wildlife, Department of Forestry and Fire Protection, Department of Pesticide Regulation, Department of Food and Agriculture, and local law enforcement, as specified.
- 29) Establishes the Medical Marijuana Regulation Fund (Fund) in the State Treasury and states that all fees collected pursuant to the Act shall be deposited into the Fund. Provides that all moneys in the fund are available, upon appropriation, to the Office solely for the purposes of fully funding and administering the Act.
- 30) Creates the Special Account for Environmental Enforcement as an account within the Fund and provides that the moneys in the account are available, upon appropriation, to the Office to distribute monies to the entities listed above to be used to enforce the environmental regulation of licensed cultivation sites.
- 31) Requires all penalties collected to be deposited directly into the General Fund, to be available upon appropriation.
- 32) Authorizes the Office to establish and administer a grant program to allocate monies from the Fund to state and local entities for the purpose of assisting with medical marijuana regulation and enforcement of this part.

**Transportation Provisions**

- 33) Specifies requirements for a licensed transporter to include requirements that it: ship only to facilities issued a conditional license and only in response to a request for a specific quantity and variety; complete a shipping manifest form prescribed by the Office prior to transporting medical marijuana products; securely transmit a copy of the manifest to the licensee that will receive the medical marijuana product as well as to the Office prior to transport; and that both transporters and licensed facilities maintain each shipping manifest and make it available to local code enforcement officers, any other locally designated enforcement entity as well as the Office upon request.
- 34) Specifies transported medical marijuana products be transported only in a locked, safe and secure storage compartment that is securely affixed to the interior of the transporting vehicle and not visible from outside the vehicle. Prohibits the vehicle from having external markings that it is transporting medical marijuana. Requires the vehicle travel directly from one licensed facility to another licensed facility authorized to receive the shipment.
- 35) Requires transport vehicles carrying more than \$10,000 retail value of medical marijuana to be staffed with a minimum of two employees, one of whom must remain with the vehicle at

all times when the vehicle contains medical marijuana. Requires each transport team member to have access to a secure form of communication by which to communicate with personnel at the licensed facility at all times when the vehicle contains medical marijuana. Requires each transport team member to possess documentation of licensing and a government-issued identification card at all times when transporting or delivering medical marijuana, and to produce it to the Office or law enforcement upon request. Clarifies that these provisions do not authorize or permit a licensee to transport medical marijuana or medical marijuana products outside the state.

- 36) Provides that these transportation provisions only apply to licensed transporters.
- 37) Prohibits a local jurisdiction from preventing transportation through or to a facility issued a conditional license by a conditionally licensed transporter acting in compliance with the Act.

### **Enforcement Provisions**

- 38) Clarifies that a state agency is not required to enforce local laws regarding the site or operation of a facility issued a conditional license.
- 39) Authorizes the Office to assist state taxation authorities in the development of uniform policies for the state taxation of licensees.
- 40) Authorizes the Office to enforce all of the requirements of this part, including any regulations adopted pursuant to this part.
- 41) Requires the Office to delegate the authority to enforce the requirements of this part, including any regulations, to a local government upon request of that entity.
- 42) Provides that nothing in this part shall be interpreted to supersede or limit local authority, or interpreted to require the Office to undertake local enforcement.
- 43) Establishes a fine of up to \$35,000 for each willful violation of conditional license application provisions of the Act, and a fine of up to \$10,000 for each technical violation, as specified.
- 44) Authorizes a District Attorney, County Counsel, City Attorney or City Prosecutor to bring an action to enjoin a violation or the threatened violation of the Act. Provides that the action be brought in the county in which the violation occurred or is threatened to occur and that a local government's authority to take requisite enforcement actions pertaining to its own ordinances or regulations is not diminished. Clarifies that an action under the MMPA may still be taken. Clarifies that the Act shall not be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a facility issued a conditional license.

### **Cultivation Provisions**

- 45) Requires the Office to notify local law enforcement of all conditional licenses issued for cultivation sites in that jurisdiction.
- 46) Requires a licensed cultivation site to display the state license in an available and easy to read manner at the location.



47) Requires that no later than January 1, 2022, all medical marijuana grown, produced, distributed and sold in the state meet the certified organic standards. Requires the Office to establish appellations of origin for marijuana grown in California and work with county agricultural commissioners 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.

### **Security, Recordkeeping, and Other Regulatory Provisions**

48) Requires conditionally licensed facilities to implement safety security measures to both deter and prevent unauthorized entrance into areas containing marijuana and theft of marijuana at those facilities to be implemented by a facility issued a conditional license. Requires security measures to include: preventing individuals from remaining on the premises of the facility if they are not engaging in activity expressly related to the operations of the facility; establishing limited access areas accessible only to authorized facility personnel; and storing all finished marijuana in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss, except small amounts used for display, samples, or immediate sale.

49) Requires a facility issued a conditional license to notify appropriate law enforcement authorities within 24 hours after discovering significant discrepancies identified during inventory, as determined by the Office; diversion, theft, loss, or any criminal activity involving the facility or a facility agent; the loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or facility agents; and any other breach of security.

50) Requires a licensed cultivation site to weigh, inventory, and account for on video, all medical marijuana to be transported prior to its leaving its origination location. Requires that, within eight hours after arrival at the destination, the licensed dispensing facility shall reweigh, reinventory, and account for on video, all transported marijuana.

51) Requires the Office to maintain confidentiality for information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the Office for the purposes of administering the Act and exempts this information from the California Public Records Act. States that this information is not subject to disclosure to an individual or private entity, except as necessary for authorized employees of the state to perform official duties pursuant to the Act.

52) Specifies that these provisions do not preclude the Office from notifying state or local agencies about information submitted to the Office that the employee suspects is falsified or fraudulent; notifications from the Office to state or local agencies of apparent violations of this Act or an applicable local ordinance; verification of requests by state or local agencies to confirm licenses and certificates issued by the Office or another state agency; or providing information requested pursuant to a court order or subpoena issued by a court, an administrative agency, or local governing body authorized by law to issue subpoenas.

53) Specifies that information shall not be disclosed beyond what is necessary to achieve the goals of a specific investigation or notification or the parameters of a specific court order or subpoena.

- 54) Provides 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 the Act and regulations adopted pursuant to the Act, are not unlawful under state law and shall not be an offense subject to arrest or prosecution.
- 55) Provides that 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 permitted pursuant to a conditional license, are not unlawful under state law and shall not be an offense subject to arrest or prosecution.
- 56) Sets forth requirements for record keeping by a licensee, specifically that a licensee shall not cultivate, process, store, manufacture, transport, or sell medical marijuana in the state unless accurate records are kept at the licensed premises of the growing, processing, storing, manufacturing, transporting, or selling by the licensee in the state.
- a) States that the records shall include the name and address of the supplier of marijuana received or possessed by the licensee, the location at which the marijuana was cultivated, the amount of marijuana received, the form in which it is received, the name of the employee receiving it, and the date of receipt. States that these records shall also include receipts for all expenditures incurred by the licensee and banking records, if any, for all funds obtained or expended in the performance of any activity under the authority of the conditional license.
  - b) Authorizes a licensee who has a conditional license for more than one premises to keep all records at one of the conditionally licensed premises, and requires records to be kept for a period of seven years from the date of the transaction.
- 57) Authorizes the Office or a local agency delegated the authority to enforce the licensing requirements of this Act to examine the books and records of a conditional licensee and visit and inspect the premises. Requires books or records requested by the Office or that local agency to be provided by the conditional licensee no later than five business days after the request is made.
- 58) Authorizes the Office or a local agency delegated the authority to enforce the licensing requirements of this Act 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 that the facility is open, or at any reasonable time, to ensure compliance and enforcement of the provisions of the Act or a local ordinance. Provides that if a licensee or an employee of a licensee refuses, impedes, obstructs, or interferes with an inspection, the conditional license may be summarily suspended and the Office shall directly commence proceedings for the revocation of the conditional license.
- 59) Provides that if a licensee fails to maintain or provide the books and records required, the licensee shall be subject to a civil fine of \$15,000 per individual violation.
- 60) Authorizes the Office or a local agency delegated the authority to enforce the licensing requirements of this Act to require a licensee to contract for an independent audit of the records required under these provisions, and that the licensee shall be liable for all costs associated with the audit.

**Taxation Provisions**

- 61) 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 operating under the Act.
- 62) Requires the Board of Supervisors or City Council to specify in the ordinance the activities subject to the tax, the applicable rate or rates, the method of apportionment, and the manner of collection of the tax. Provides that the tax may be imposed for general governmental purposes or for purposes specified in the ordinance.
- 63) Specifies that the tax authorized may be imposed upon any or all of the activities outlined above, 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. Specifies that a tax for these purposes is applicable voter approval requirements imposed by law.
- 64) Specifies that these provisions do not limit or prohibit the levy or collection or any other fee, charge, or tax, or a license or service fee or charge upon, or related to, the activities outlined above, and shall not be construed as limiting the tax authority of a city, county, or city and county as provided by law.
- 65) Requires, on or before July 1, 2016, the State Board of Equalization (BOE) to complete a report and submit it to the Legislature and Governor's Office on the estimated tax collected on the sale of medical marijuana, using the most current data available. States that the report should also include expected tax revenues, under the existing tax structure, for the years 2016 to 2021, inclusive.

**Health, Safety, and Labeling Provisions**

- 66) Defines the following terms in the Sherman Food, Drug and Cosmetics Law:
  - a) "Edible medical marijuana product" as medical marijuana or a medical marijuana-derived product that is ingested or meant to be ingested through the mouth and into the digestive system.
  - b) "Labor peace agreement" means an agreement between an entity and a bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees.
  - c) "Representative samples" as samples taken from each batch or shipment of medical marijuana received from a licensed cultivation site or any other source if intended for sale.
- 67) Requires the Office, by July 1, 2017, to report to the Legislature on the feasibility of developing a program to certify laboratories for the testing of medical marijuana and related

products and the feasibility of a labeling requirement for edible marijuana products that incorporates information on the cannabinoid content.

- 68) Requires a facility issued a conditional license to bear the responsibility for:
- a) Maintaining supplier information in order for recall procedures to be implemented, if and when necessary; and
  - b) Labeling of all medical marijuana and medical marijuana products that shall, at a minimum, include the following:
    - i) A list of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC) and cannabidiol (CBD) content, clear recommended dosage, and the size or volume of the recommended dose.
    - ii) Clear indication, in bold font, that the product contains medical marijuana.
    - iii) The statement “FOR MEDICAL USE ONLY. KEEP OUT OF REACH OF CHILDREN AND ANIMALS” in bold print.
    - iv) Identification of the source and date of cultivation and manufacture.
    - v) The name and location of the dispensary providing the product, and the date of sale.
    - vi) Any other requirements set by the Office.
- 69) Provides that for purposes of these provisions, edible medical marijuana products are deemed to be unadulterated food products. Authorizes baked edible medical marijuana products, including but not limited to, brownies, bars, cookies and cakes, tinctures and other edible medical marijuana products that do not require refrigeration or hot holding to be manufactured, sold or otherwise distributed at facilities issued a conditional license under the Act.
- 70) Requires a facility issued a conditional license to have an owner or employee who has successfully passed an approved and accredited food safety certification examination prior to selling, manufacturing or distributing edible medical marijuana products requiring refrigeration or hot holding. Requires individuals manufacturing or selling edible medical marijuana products to thoroughly wash their hands before commencing production and before handling finished edible medical marijuana products.
- 71) States that all edible medical marijuana products sold for direct consumption and infused with marijuana concentrate shall be individual wrapped at the original point of preparation.
- 72) Requires products containing THC to be prepared in compliance with maximum potency standards for THC and THC concentrates set forth in the Office's regulations.
- 73) Sets forth requirements for labeling of edible medical marijuana products. Requires, prior to sale or distribution at a licensed dispensing facility, edible medical marijuana products shall be labeled and in an opaque and tamper evident package. Labels and packages of edible medical marijuana products shall not be made to be attractive to children. Prohibits the use

of photos or images of food on products or labels, and only authorizes the use of generic food names to describe the products.

- 74) All edible medical marijuana product labels shall include the information listed above, prominently displayed and in a clear and legible font, and also the net weight of medical marijuana in package and a warning if nuts or other known allergens are used and shall include the total weight, in ounces or grams, of medical marijuana in the package.

### **Physician Provisions**

- 75) Requires the MBC to prioritize cases involving physicians who recommend marijuana to patients for medical purposes without a good faith prior examination of the patient and medical reason therefor.
- 76) Makes it a misdemeanor for a physician and surgeon who recommends medical marijuana to a patient to accept, solicit, or offer any form of remuneration from or to a facility issued a conditional license to engage in medical marijuana activities if the physician and surgeon or his or her immediately family have a financial interest in that facility.
- 77) Requires the MBC to consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, on developing and adopting medical guidelines for the appropriate administration and use of medical marijuana.
- 78) Prohibits a physician and surgeon from recommending medical marijuana to a patient unless that person is the patient's attending physician, as defined under existing law.
- 79) Requires advertising for physician recommendations for medical marijuana to meet all requirements to bear a prescribed notice for consumers and comply with false advertising prohibitions for healing arts practitioners, as specified, and prohibits price advertising that is fraudulent, deceitful, or misleading.

**FISCAL EFFECT:** According to the Senate Appropriations Committee analysis dated May 28, 2015:

- Ongoing costs, likely over \$20 million per year to license medical marijuana cultivators, transporters, and dispensaries by the new Office of Medical Marijuana Regulation (special fund). For comparison, the California State Board of Pharmacy, which licenses and regulates pharmacists and pharmacies, has an annual budget of about \$20 million per year.

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

- Unknown costs for enforcement of the bill's requirements by local governments (local funds and special funds). The bill requires the Office to enforce its provisions, but requires the Office to delegate enforcement authority to requesting local agencies. 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.

- Unknown fee revenues to offset the costs to implement the bill (special fund). The bill gives the new Office broad authority to set licensing fees sufficient to pay for the Office's costs to operate the licensing program, costs incurred by the Office or the Department of Justice to enforce the bill, costs incurred by local law enforcement agencies to enforce the bill, and costs incurred by state and local environmental agencies for enforcement costs relating to cultivation facilities. The fee revenues generated under the 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 medical marijuana industry.
- Unknown costs for the Department of Justice 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.
- Ongoing costs of about \$1 million per year for enforcement of food and drug safety requirements on medical marijuana products by the Department of Public Health (General Fund or fee revenues from licensees).

#### **COMMENTS:**

**Purpose.** This bill is author sponsored. According to the author, "SB 643 seeks to resolve many of the issues created by the enactment of the Compassionate Use Act and subsequent legislation. Our bill creates a statewide comprehensive program overseeing the medical marijuana industry, from planting to consumption, and all the steps in between. California voters made it clear that they wanted medical marijuana to be legalized, but issues and concerns for growers, doctors, dispensaries, law enforcement, district attorneys, cities, counties and others have only become more complicated.

I represent the primary growing region for medical marijuana in the western United States, specifically remote expanses of Mendocino, Humboldt and Trinity counties, which are responsible for up to 70% of the marijuana grown in the west. Much of this area of the state has come to rely on the economic benefits of marijuana cultivation, but also suffers from the negative environmental, public safety and public health effects that can arise from rogue cultivators and lack of regulation. Trespass grows have become an environmental disaster in this region, illegally diverting millions of gallons of water from rivers and streams, creating a dumping ground for pesticides, insecticides, rodenticides and fertilizers, and depositing huge amounts of sediment into our waterways from crop runoff.

Since the voters of California passed Proposition 215 in 1996, it has become clear that there needs to be a comprehensive regulation bill from the Legislature that oversees the cultivating, processing, manufacturing, transportation, prescribing and sale of medical marijuana. The Legislature has worked hard over the last couple of years to enact a regulatory program that will recognize the voter's mandate, streamline the ability of the industry to grow and sell a legal product and that this bill contains much of that hard work as well as reflects the efforts of many groups, individuals who have spent years working in this industry.

Currently, there are virtually no rules and regulations on the cultivation side of the medical marijuana industry, and it is important that we bring this legal crop into the regulatory framework expected for other commodities. The severe drought California is now experiencing has only made the need for this legislation all the more urgent."

**The Compassionate Use Act (CUA) and SB 420.** In 1996, voters approved the CUA, which allowed patients and primary caregivers to obtain and use medical marijuana, as recommended by a physician, and prohibited physicians from being punished or denied any right or privilege for making a medical marijuana recommendation to a patient. In 2003, SB 420 (Vasconcellos), Chapter 875, Statutes of 2003, established the Medical Marijuana Program (MMP), which allowed patients and primary caregivers to collectively and cooperatively cultivate medical marijuana, and established a medical marijuana card program for patients to use on a voluntary basis. The card can be used to verify that a patient has authorization to possess, grow, transport, or use medical marijuana in California, and that a caregiver has authorization to possess, grow, and transport medical marijuana in California. The MMP facilitates the registration of qualified patients and their caregivers through a statewide identification system, and qualified patients and their caregivers may apply for and be issued an identification card through their county of residence. Upon issuance of the card, it is registered with an online database which law enforcement can use to verify whether a card is valid.

Under the MPP, a person is required to get a recommendation for medical marijuana from an attending physician, which is defined to mean someone who, "...has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate." Written documentation of this recommendation is required to be submitted to the county in order to receive a medical marijuana card. However, since the passage of Proposition 215 and SB 420, the state has not adopted a framework to provide for appropriate licensure and regulation of medical marijuana. As a result, in the nearly 20 years since the passage of Proposition 215, there has been an explosion of medical marijuana collectives and cooperatives that are largely left to the enforcement of local governments, resulting in the creation of a patchwork of local regulations for these industries and with little statewide involvement.

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

**California Supreme Court Affirms Local Control Over Medical Marijuana.** By exempting

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

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

**U.S. Department of Justice (USDOJ) Guidance Regarding Marijuana Enforcement.** On August 29, 2013, the USDOJ issued a memorandum that updated its guidance to all U.S. Attorneys in light of state ballot initiatives to legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. While the memorandum noted that illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels, it also noted that USDOJ is committed to using its limited investigative and prosecutorial resources to address the most significant threats, which include: preventing distribution to minors; preventing revenue from marijuana from going to criminal enterprises; preventing diversion to other states where marijuana is not legal under state law; preventing state-authorized marijuana from being a cover for trafficking in other illegal drugs or illegal activity; preventing violence in cultivating and distributing marijuana; preventing drugged driving and other public health problems from marijuana use; and preventing growing, possessing or using marijuana on public lands or on federal property.

According to the USDOJ, "In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above...In those circumstances, consistent with the traditional allocation of federal-state efforts in this area,



enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity."

**Marijuana Frameworks Established in Other States.** There are currently 23 states, plus the District of Columbia, that allow for medical marijuana and have some level of regulation. California is the only state that permits medical marijuana in the absence of a robust state-wide regulatory system. The following states have statewide medical marijuana regulatory systems: Alaska, Arizona, Colorado, Connecticut, Washington DC, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont and Washington. In addition, 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. Currently, a majority of Americans support legalization by a margin of seven points—52 percent to 45 percent, according to findings from a Pew Research Center survey in March 2013. Support for marijuana legalization has risen sharply since 2010, by 11 percentage points.

This increasing support for marijuana legalization is present in California as well, with recent polls showing that a majority of Californians support marijuana legalization. Currently, there are an estimated four different marijuana initiatives attempting to qualify for the 2016 ballot. In order for any marijuana scheme 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.

**Medical Marijuana Industry in California.** According to the author's Sunrise Questionnaire, submitted to the Committee pursuant to Government Code Section 9148 et seq., by law enforcement estimates, over 60% of all marijuana in the country is grown in the Emerald Triangle counties of Humboldt, Mendocino and Trinity, all of which are in the author's district, and once the industry is regulated, and the medical marijuana products are certified as safe, the market is expected to open up substantially. In addition, once the industry is regulated, the author believes that physicians who do not recommend or even discuss medical marijuana due to its quasi-legal nature and outright ban from the federal government may be more willing to discuss and recommend medical marijuana to their patients.

Since 1996 when the Compassionate Use Act (CUA) was passed, individuals, patients and organizations from all sides have been asking the Legislature to enact a regulatory framework that will settle many of the open ended questions and legal status of the medical marijuana. According to the author, the Legislature has enacted several bills over the years clarifying CUA, but nearly everyone agrees that a complete regulatory framework needs to be enacted as soon as possible. The author asserts that the harm starts at the environmental side of things, and simply expands from there. Right now, with virtually no standards for cultivation, the state is seeing the worst damage to watersheds, forests and rivers than ever before on the North Coast. The regional and State Water Boards, along with California Department of Fish and Wildlife, are

doing what they can, but without legislation, their hands are largely tied. This leads to streams and rivers literally running dry (even before the current drought) and to huge loads of sediments and toxic wastes being dumped into the watersheds. The lack of regulation complicates water supply for millions of legal residential and commercial water users throughout the state-- entire tracts of forests are being mowed down by rogue growers and planted with marijuana with no permits, oversight, or regard for the environment.

The author believes that the lack of regulation on the processing, manufacturing, testing, transportation and resale needs to be fixed as well. Without statewide standards produced by specific health and safety testing, ingredient lists, and dosage listings on all marijuana products, people are put at risk. Of significant concern is the “edibles” and “oils” market, which are relatively new to consumers and have the potential to expand beyond the typical cigarette style that most people are used to. And with no standards for dosages or active ingredient lists, for example, the danger is very real. According to the author, it is well past time we treat this product like a real medication and give it the same scrutiny and oversight that all other legal drugs have.

Cities and counties that have medical marijuana ordinances take the first step in protecting consumers and the public, but without a strong state-wide regulatory body overseeing all aspects of the product chain, consumers have very little control over the risk unless they have personal knowledge of the product. There simply is no cohesive strategy for protecting consumers in the industry, and as a very loose and only quasi-legal, it is very difficult for the industry to self-police. Clear guidelines from the state and or the local jurisdiction, backed up by the state, is the only way to ensure protection of consumers and the public.

According to the author, nearly every provision of the SB 643 is designed to preclude consumer injury, from the cultivation standards all the way to the resale of the final product, and by taking a multi-billion dollar industry with virtually no regulations and placing the entire product chain into a regulated environment. All aspects of the product chain need to be regulated, from “Seed to Sale”. This would include creating licensures and regulatory framework for all aspects of the industry, including cultivation, processing, manufacturing, prescribing, testing, transporting, and selling. The health and safety of the product must be of top concern for the state and other jurisdictions, and making sure no diversions occur for non-medical marijuana purposes.

Every aspect of this current quasi-legal product includes dangers at this time, from law enforcement to cultivator neighbors, to transportation, manufacturing and beyond. Creating a uniform policy toward all aspects of medical marijuana will be a giant step in protecting consumers, but the public at large, as well as our water and environment. However, according to the author, the one danger in this process is making it so onerous and laborious to become legitimate that people simply refuse to participate and stay in the black/grey market. The author asserts this bill is designed to limit that as much as possible, while accepting that some in the industry simply will not be able to participate.

**SB 643 Licensing and Regulatory Framework.** According to the author, this bill will address many of these concerns by doing all of the following:

- Creates the Office of Medical Marijuana Regulation, under the Secretary of Business, Consumer Services and Housing. According to the author, the Secretary oversees the ABC and the Dept. of Consumer Services and can draw on the expertise of both agencies to help the Office get set up and running.

- Requires that all medical marijuana grown, produced, distributed, prescribed, and sold in the state meet the California certified organic standards by January 1, 2022. According to the author, this is in effort to guard against consumption of harmful and damaging products, and to help protect the cultivating watersheds and environment from toxics.
- Creates “Appellations of Origin” for medical marijuana. According to the author, similar to the wine grapes grown in the southern part of his district, this will help establish and perpetuate authenticity in the industry.
- Allows local governments to impose a tax or fee on cultivation, above the ultimate sales tax, to help defray the expense of regulating the cultivation and processing of the commodity in their jurisdiction. This is designed to make sure local authorities can afford to pay for the implementation of the regulations allowed under this legislation or any other. Local authorities would have to abide by Prop. 218 regulations.
- Licenses would only be valid if both the state and the local jurisdiction approved the applications. The author's goal is to allow as much local control as possible.
- All licensed location and license information would be given to local law enforcement. In an effort to prevent wasted resources and limit dangerous circumstances, the author believes that local law enforcement should know when and where all licensees are operating.
- A conditional license issued pursuant to this section shall be valid for 12 months after the date of issuance, after which it may be renewed for a period of 36 months. This is a departure from previous bills that only give 12-month renewals. Once licensees have established themselves, the author does not believe they should have to go through the process of renewal every year.

**Current Related Legislation.** AB 26 (Jones-Sawyer) of the current legislative session, would enact the Medical Cannabis Regulation and Control Act to license and regulate medical cannabis, and would create the Division of Medical Cannabis Regulation and Enforcement within the Department of Alcoholic Beverage Control to administer the act. *STATUS: This bill is in the Assembly Business and Professions Committee.*

AB 34 (Bonta) of the current legislative session, would enact the Medical Cannabis Regulation and Control Act to license and regulate medical cannabis, and would establish the Division of Medical Cannabis Regulation and Enforcement within the Department of Alcoholic Beverage Control to administer the act. *STATUS: This bill was held in the Assembly Appropriations Committee.*

AB 243 (Wood) of the current legislative session, would require all medical marijuana cultivation (MMC) to be conducted in accordance with state and local laws and best practices, as specified, and would require state agencies to address environmental impacts of MMC and coordinate with local governments in enforcement efforts, and establishes a MMC permitting system. *STATUS: This bill is scheduled to be heard in the Senate Governance and Finance Committee.*

AB 266 (Bonta, Cooley, Jones-Sawyer, and Lackey), establishes a licensing and regulatory framework for medical cannabis under the Medical Cannabis Regulation and Control Act (Act),

and would establish the Office of Medical Cannabis Regulation within the Office of the Governor, the Division of Medical Cannabis Regulation within the State Board of Equalization, the Division of Medical Cannabis Manufacturing and Testing within the California Department of Public Health, and the Division of Medical Cannabis Cultivation within the California Department of Food and Agriculture, and would set forth the duties of the respective regulatory authorities. *STATUS: This bill is scheduled to be heard in the Senate Health Committee.*

**Prior Related Legislation.** AB 1262 (Correa) of 2014, would have established a licensing and regulatory framework for the cultivation, processing, transportation, testing, recommendation and sale of medical marijuana to be administered by the Department of Consumer Affairs (DCA) and enforced primarily at the local level. *NOTE: This bill was held in the Assembly Appropriations Committee.*

AB 1894 (Ammiano) of 2014, would have enacted the Medical Cannabis Regulation and Control Act to license and regulate the cultivation, manufacture, testing, transportation, storage, distribution, and sale of medical cannabis, and would create the Division of Medical Cannabis Regulation and Enforcement within the Department of Alcoholic Beverage Control. *NOTE: This bill was held on the Assembly Floor.*

AB 473 (Ammiano) of 2013, would have enacted the Medical Marijuana Regulation and Control Act to license and regulate the cultivation, manufacturing, testing, transportation, distribution, and sales of medical marijuana and medical marijuana products, and would create the Division of Medical Marijuana Regulation and Enforcement within the Department of Alcoholic Beverage Control. *NOTE: This bill was held on the Assembly Floor.*

AB 604 (Ammiano) of 2013, would have enacted the Medical Cannabis Regulation and Control Act to license and regulate the cultivation, manufacture, testing, transportation, storage, distribution, and sale of medical cannabis, and would create the Division of Medical Cannabis Regulation and Enforcement within ABC. *NOTE: This bill was held in the Senate Public Safety Committee.*

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. *NOTE: This bill was held in the Senate Committee on Business, Professions and Economic Development.*

SB 1182 (Leno) of 2012, would have provided that a cooperative or collective that operates within the Attorney General's (AG) guidelines shall not be subject to prosecution for marijuana possession or commerce, as specified. *NOTE: This bill was held on the Senate Floor.*

AB 1300 (Blumenfield), Chapter 196, Statutes of 2011, provided that a local government entity may enact an ordinance regulating the location, operation or establishment of a medical marijuana cooperative or collective; authorizes local government entities 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 Medical Marijuana Program.

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. *NOTE: This bill was held in the Senate Appropriations Committee.*

AB 390 (Ammiano) of 2009, would have legalized the possession, sale, cultivation and other conduct relating to marijuana and required the Department of Alcoholic Beverage Control to administer and enforce the terms of legalized marijuana. *NOTE: This bill was held in the Assembly Health Committee.*

SB 420 (Vasconcellos), Chapter 875, Statutes of 2003, established 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 Compassionate Use Act.

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.

### **POLICY ISSUE(S):**

This bill would establish a novel licensing and regulatory scheme for medical marijuana, which covers every aspect of the medical marijuana industry, from seed to sale. In addition to tasking the newly-created Office with myriad duties involved in this new scheme, the bill also places enforcement responsibilities primarily on the State, as well as establish a dual licensure scheme, which would require a close partnership between the Office and local governments. In addition, the bill seeks to establish a comprehensive regulatory scheme for medical marijuana, and would require the establishment of a comprehensive set of health and safety standards for medical marijuana and medical marijuana products. As would be expected for any new regulatory program of this scale and scope, a number of outstanding issues and questions will need to be addressed in order to ensure that the program has the greatest chance of success.

**Establishing a new Office within the Business, Consumer Services, Housing Agency (BCSH).** The BCSH oversees various departments, boards and commissions, including: 1) California Housing Finance Agency, 2) Department of Alcoholic Beverage Control; 3) Department of Business Oversight; 4) Department of Consumer Affairs; 5) Department of Fair Employment and Housing; 6) Department of Housing and Community Development; 7) Seismic Safety Commission; 8) Alcoholic Beverage Control Appeals Board; and 9) Horse Racing Board. As a result of its varied jurisdiction, the BCSH's mission is to: license and regulate professionals and businesses in California, so as to protect consumers; to preserve, expand and fund safe and affordable housing opportunities; to investigate and research earthquake related issues to advise on ways to reduce earthquake risk; and to protect the civil rights of all Californians from acts of hate violence and unlawful discrimination in employment, housing and public accommodations.

While many of the entities within BCSH may adopt complex regulations relating to their specified areas, the type of expertise required to establish and implement, at wholesale, such a comprehensive program that covers all aspects of medical marijuana activities, will pose great challenge to any state entity, especially one that is completely new. Not only will a newly-established Office of Medical Marijuana Regulation have to deal with overcoming all of the administrative obstacles that exist to establishing a brand new government entity, such as establishing a budget, hiring new staff, developing business practices, and establishing an information technology system that will meet all of these needs under the bill, it will also have to

take on an issue that is novel, complex, and requires much expertise. Successful implementation of any medical marijuana program will require strong leadership and involvement from the Administration to prioritize implementation so that it meets federal guidance and prevents the potential for illegitimate activities, to determine whether it is appropriate to coordinate efforts among all affected entities that will play a role in establishing a robust and effective licensing and regulatory framework, all of which the Office's success will rely heavily on, in addition to having sufficient resources to ensure that all staffing and other needs will be met.

**Office's Ability to Absorb New Responsibilities.** This bill would require the Office to adopt regulations for implementation and enforcement, including specific procedures for the issuance and revocation of licenses, the application forms and fees, by January 1, 2018. This bill also requires the Office to adopt regulations that establish standards for cultivation, manufacturing, transportation, storage, distribution, provision, donation, and sale of medical marijuana and medical marijuana products, as specified. These regulations are thereby required to cover everything from licensure, to comprehensive health and safety standards for medical marijuana, including establishing the maximum potency standards for THC. This bill would delay implementation, thereby giving the Office 24 months to adopt regulations. In addition, the bill authorizes the Office to consult with other state and local agencies, industry, and public and private entities to establish these regulations.

Due to the extensive number and type of regulations required to be adopted, in addition to the level of outside expertise the Office will need to rely on, the author may wish to consider whether 24 months will be enough time to establish all of these standards, or if the Office should be given more time to adopt these standards, or be authorized to adopt temporary emergency regulations.

The author may also wish to consider the benefits of spreading out duties among existing agencies that already have expertise in issues like adopting, implementing, and enforcing cultivation and health and safety standards, such as the Department of Food and Agriculture and the Department of Public Health. At a minimum, the author should strongly consider requiring the Office to consult with other agencies, instead of merely authorizing such consultation, and requiring the Office to establish an advisory taskforce with the requisite expertise to assist the newly-established Office during this rulemaking process and to clarify the appropriate roles of each state entity that is, or would be, affected by medical marijuana activities. Such an advisory taskforce should include representatives from the Department of Public Health, California Department of Food and Agriculture, State Water Resources Control Board and other environmental departments, such as the Department of Fish and Wildlife, the Attorney General's Office (especially critical to help navigate the federal and changing legal landscape), local governments, medical marijuana experts, and industry representatives.

In addition, while the bill authorizes the Office to assist state taxation authorities in the development of uniform policies for the state taxation of licensees and requires the State Board of Equalization (BOE) to complete a report on the estimated tax collected on the sale of medical marijuana and expected tax revenues, the author should consider requiring the Office to work with the BOE on establishing clear policies for the state taxation of licensees, and include the BOE in any taskforce activities.

The author should also consider working with the BSCH to determine the feasibility, timeline, and cost to establish a database system that would meet these new requirements to assist in

tracking licensees', shipments, and other information to help and product, i.e."seed to sale" tracking, based on the State's troubled history with implementing new information technology projects.

**Implementation of the Act through Rulemaking.** The bill leaves much of the administration of the Act to the rulemaking process by requiring the Office to promulgate myriad regulations, instead of providing a clear, statutory framework. This process can take years, given requirements for notification, public comment and additional delays that arise whenever amendments to proposed regulations are made, and the regulatory process in general has been criticized for lacking transparency and robust stakeholder input that the Legislative process allows for.

For example, this bill was recently amended to remove provisions directing the Office to certify laboratories for the testing of medical marijuana, and deleted language specifying health and safety requirements for medical marijuana and medical marijuana products. Now, the bill merely requires the Office to "establish standards for the cultivation, manufacturing, transportation, storage, distribution, provision, donation, and sale" of medical marijuana," and requires applicants to demonstrate compliance with "all applicable agricultural, consumer protection, food product and safety, and environmental requirements," with little other guidance. In addition, the bill requires the Office to report to the Legislature on the "feasibility" of developing a program to certify laboratories, by July 1, 2017, and only specifies limited health and safety standards.

While the author has indicated that the bill is designed to limit a regulatory process that is not too onerous and laborious for market participants, the author may wish to consider whether it is appropriate to delegate too much discretion to the Office and other regulatory agencies, which would leave policy decisions to be made at the agency level, rather than through the legislative process. In addition, the role for many agencies is to implement policies, rather than determine what those policies should be; as a result, it might be beneficial to provide greater guidance to the Office to help the Office understand the intent of the Legislature and narrow the scope of the Office's rulemaking authority.

**Clarifying Licensure Provisions.** The bill requires a dual licensure framework, thereby requiring both a conditional state license and a local license or permit in order to operate. The author may wish to clarify that such licensed facilities must be dually licensed in order to conduct business with one another by amending the definitions for licensees to specify that licensees must hold both a conditional license and a local license or permit. In addition, the author may wish to specify that the application process clearly require a licensee to verify that they are not located near schools, which would be a violation of existing law, in order to quickly weed out ineligible licensees.

**Tiered Licensing Schemes.** Washington and Colorado have both created comprehensive systems of legal production and sale, subject to licensing, regulation and taxation. However, the laws require different industry structures and build on their existing medical systems in different ways. Colorado allows entrepreneurs to produce cannabis and sell it at retail, and such businesses were, at least initially, required to produce the majority of the marijuana they sell (vertical integration), while Washington state maintains clear separation between marijuana growers, processors and retailers (horizontal integration or "tiered" licensing). Both models seek to, however, reduce diversion and increase accountability. In addition, the commercial market in



Washington is supervised by the Washington State Liquor Control Board, while Colorado's law vests authority to regulate the commercial market in the newly created Marijuana Enforcement Division of the Department of Revenue. Colorado's medical marijuana program is also under that Division – prior to the recreational initiative, the Medical Marijuana Enforcement Division was regulating that part of the market.

According to proponents of a tier licensing system, a horizontal or tiered system of licensing (requiring separate licenses for cultivators, manufacturers/wholesalers, and retailers, and limiting a licensee from holding more than one license type) is modeled after alcohol distribution, and acts to prevent the ability for large firms to dominate local markets by keeping the categories separate and distinct, which prevents one group from controlling too much of the market. Proponents also believe that a tiered licensing system based on the alcohol distribution system, which requires distributors to be responsible for collecting and remitting taxes, would make it easier for the state to keep track of industry transactions and to collect taxes, and would provide checks and balances that would make it harder to allow for diversion, contraband, or "cooking the books."

However, some believe that requiring licensees to be involved in all phases of medical marijuana activities would serve to keep these licensees smaller, as it would take more capital to engage in all parts of the industry. In addition, some believe that larger businesses are not problematic because those larger businesses may be better positioned to have the resources available to ensure that they are following all regulatory requirements, for example, by hiring compliance managers. In addition, some believe that requiring a horizontal licensure scheme would pose undue hardship on many existing businesses who may engaged in multiple aspects of the industry, some at the request of the localities in which they operate that require vertical licensure.

This bill adopts an open approach by allow licensees to hold more than one type of license type, but provides no additional clarification. However, the author may wish to consider the benefits of the different licensing schemes, including the ability of each scheme to prevent diversion and prevent just a few players from dominating the market. If multiple license types are able to be held by a single licensee, the author may also consider whether it may be appropriate to limit multiple license types based on the size of the operation, for example, by only allowing retailers to engage in cultivation if they are cultivating a small amount. The author may also wish to consider establishing different levels of license types to accommodate businesses of various sizes, and to clearly establish a sliding scale for fees to preserve the small businesses that are currently engaged in medical marijuana activities, for example, small farmers.

**Dual Licensure and Enforcement.** The bill requires facilities, manufacturers, cultivation sites, and transporters to be licensed by the Office, and requires enforcement of these provisions and health, safety, and other standards to be carried out by the State, unless a local entity has requested the authority to enforce these provisions at the local level. In addition, this bill enacts a dual licensure scheme that requires a licensee to obtain both a state conditional license and a local license or permit prior to engaging in any medical marijuana activities. **As a result, there may be some inevitable confusion between the Office and local governments in their enforcement roles, which may be further complicated by the fact that licensure depends on having both approvals, and that an enforcement action taken by a state or local government will inevitably affect their equivalent state or local license, and trigger enforcement.** The author may wish to require the Office to consult with local governments and develop a framework that clarifies enforcement roles, regardless of whether a local entity specifically requests to be



delegated enforcement authority or not, and require the Office to ensure open communication and collaboration with local governments.

**Patient Access to Care.** This bill delays implementation of many of these provisions, including promulgating regulations for licensing and enforcement until January 1, 2018, and for issuing and requiring conditional licenses until July 1, 2018. However, the bill would delete the provisions authorizing patients and caregivers to be exempt from state criminal sanctions for "collectively or cooperatively" cultivating medical marijuana on July 1, 2017. As a result, the author may consider similarly delaying the implementation of that provision until the Office begins issuing conditional licenses, or until July 1, 2018, or longer, in order to provide time for applicants to go through the licensure process.

The bill also limits exemptions for patients who do not sell, distribute, donate, or provide marijuana to any other person or entity, and limits the exemption for patient caregivers who serve five or less qualified patients for whom he or she is a caregiver. The author may wish to consider whether patients should be exempt for distributing marijuana without compensation, and whether limiting the number of patients a primary caregiver may serve might limit access to care for certain patients, for example, those in rural areas. The author may wish to consider specifically authorizing a facility that is operating in accordance with local regulations, and who submits an application for state conditional licensure, to continue to operate until its application is approved or denied by the Office.

In addition, the bill currently authorizes the Office to adopt regulations to limit the number of conditional licenses issued upon a finding that the otherwise unrestricted issuance of conditional licenses is dangerous to the public health and safety. Because this licensure scheme relies upon dual license, the author may wish to consider whether it is necessary to empower the Office to restrict the number of licenses issued when the local government would have the last say on whether a business would receive necessary local approval to operate or not.

**Labeling of Edible Marijuana Products.** The bill would require, among other things, that medical marijuana products, including edibles, be labeled and include specified information, such as a list of THC and CBD content and clear recommended dosage. Because medicinal marijuana varies in terms of the levels and types of active ingredient, THC or CBD, for example, and what it is used for varies among patients, it may be difficult to develop a standard "dosage" for products. As a result, the author may wish to consider clarifying labeling standards in regards to medical marijuana products and requiring products to instead state the amount of THC per milligrams in each serving, and the total amount of THC in a package. In addition, the author should consider striking provisions that requires edible products to be in opaque packaging and prohibit any packaging from containing photos or images of food, which may cause confusion for consumers and employees. The author should also include a warning to let consumers know that the intoxicating effects of edible medical marijuana products may be delayed to prevent consumers from consuming more than is necessary to alleviate symptoms.

**REGISTERED SUPPORT:**

None on file.

**REGISTERED OPPOSITION:**

None on file.

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