

ATTACHMENT A

SENATE RULES COMMITTEE

SB 94

Office of Senate Floor Analyses

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UNFINISHED BUSINESS

Bill No: SB 94
Author: Committee on Budget and Fiscal Review
Amended: 6/9/17
Vote: 27

SENATE FLOOR: Not relevant

ASSEMBLY FLOOR: 66-3, 6/15/17
(ROLL CALL NOT AVAILABLE)

SUBJECT: Cannabis: medicinal and adult use**SOURCE:** Author

DIGEST: This bill is the cannabis trailer bill for the Budget Act of 2017. This bill establishes a single system of administration for cannabis laws in California. It contains changes related to the Budget Act of 2017 that are necessary for state licensing entities to implement a regulatory framework pursuant to the Medical Cannabis Regulation and Safety Act (MCRSA), established by AB 266 (Bonta, Chapter 689, Statutes of 2015), AB 243 (Wood, Chapter 688, Statutes of 2015), SB 643 (McGuire, Chapter 719, Statutes of 2015), and SB 837 (Committee on Budget and Fiscal Review, Chapter 32, Statutes of 2016), and the Adult Use of Marijuana Act (AUMA) of 2016 (Proposition 64). This bill conforms MCRSA and AUMA into a single system that prioritizing consumer safety, public safety and tax compliance. Among other things, the bill creates agricultural cooperatives, a method for collecting and remitting taxes, a process for testing and packaging, and a process for collecting data related to driving under the influence.

Assembly Amendments delete the Senate version of the bill and insert the current language.

ANALYSIS: Specifically, this bill creates one regulatory system for commercial cannabis activity - the "Medicinal and Adult-Use Cannabis Regulation and Safety Act" – by doing the following:

1) General provisions:

- a) *Technical Changes* – Makes various changes throughout multiple code sections to replace references to “marijuana” with “cannabis” and delete code sections that are no longer required due to the integration of the medicinal and adult use systems.
- b) *Definitions* - Adds, amends, or deletes multiple definitions.
- c) *Bureau of Cannabis Control* – Recasts the section creating the Bureau of Cannabis Control (bureau) within the Department of Consumer Affairs.
- d) *Emergency Regulation Authority* - Deletes existing provision granting emergency regulation authority and adds a new one that also provides authority to re-adopt emergency regulations (one time), specifies that adopted or re-adopted emergency regulations remain in effect for no more than 180 days.

2) Incorporates various components of MCRSA, including:

- a) *Public Protection* - Specifies that protection of the public shall be the highest priority for all licensing authorities.
- b) *Property Owner Protection* - Provides protection for property owners who lease or rent a property to a licensee from asset forfeiture.
- c) *Patient Exemption* - Specifies that a qualified patient that is not engaged in commercial activity is exempt from the licensure requirements of MCRSA. Applies the same standards to a primary caregiver.
- d) *Licensing* - Clarifies that all commercial cannabis activity can only be conducted between licensees.
- e) *Distribution License Transportation Requirements* – Requires that distribution drivers be directly employed by the licensee. Clarifies that all state laws and regulations governing commercial transport apply to those transporting cannabis or cannabis products.
- f) *Retail Security Measures* - Outlines security measures for retailers and requires notification to licensing authorities and local law enforcement when inventory discrepancies or criminal activities are found.
- g) *Testing Laboratories* – Includes requirements for laboratories that were in MCRSA and are not in conflict with AUMA. These include: 1) use of a standard operating procedure to confirm or refute bad results, 2) requiring the destruction of the remains of samples, 3) notification to the bureau within one day of any change in accreditation, and 4) establishing a standard operating procedure for chain of custody controls for samples.

- h) *Cannabis Study on Motor Skills* - Requires the bureau to contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, to develop a study that identifies the impact of cannabis on motor skills.
 - i) *Local Control* - Clarifies that this division does not limit the authority or remedies of a city, county, or city and county under any provision of law, including, Section 7 of Article XI of the California Constitution.
 - j) *Pesticide Intent Language* – Adds the following intent language: The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues. Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis cultivation sites are safe for use on cannabis intended for human consumption.
- 3) Contains additional public and consumer protection provisions, including:
- a) *Exit Packaging* – Requires that all cannabis and cannabis products purchased by a consumer cannot leave a retail premises unless they are placed in an opaque packaging.
 - b) *Advertisement* - Requires that a technology platform and outdoor advertising company ensure that a licensee include their license number on any advertisements.
 - c) *Driving Under the Influence of Drugs (DUID) Task Force* - Creates a DUID Task Force with a balanced membership to make recommendations regarding prevention of impaired driving, means of identifying impaired driving, and responses to impaired driving that reduce reoccurrence.
 - d) *Open Container Standard* - Creates a new infraction if a person has opened cannabis or cannabis products in the car. Creates an exemption for a qualified patient who is carrying either a state medical identification (ID) card or a physician's recommendation.
 - e) *California Highway Patrol Funding* - Appropriates \$3 million to the California Highway Patrol (CHP) to be used to for training drug recognition experts. Program costs may include training, overtime, and backfill of state and local law enforcement officers to attend training.
 - f) *Monopoly, Excessive Concentration* – Maintains excessive concentration provisions of AUMA, applies the Cartwright Act, the Unfair Practices Act, and the Unfair Competition Law to all licensees. In addition, makes it unlawful for any person to monopolize, or attempt to monopolize, or to

combine or conspire with any person or persons, to monopolize any part of the trade or commerce related to cannabis. Gives the Attorney General the authority to enforce these provisions.

- g) *Fire and Life Safety Standards* – Adds a clarification that local fire officials retain the authority to carry out fire and life safety requirements.
 - h) *Quality Assurance and Compliance Monitoring* - Creates a quality assurance compliance monitor, employed by the bureau to conduct random quality control inspections and verify compliance with the packaging and labeling standards. The compliance monitor will also be responsible for independent tax verification.
 - i) *Cannabis Destruction* - Clarifies that only a peace officer can seize and destroy cannabis.
 - j) *Volatile Substance Definition* - Codifies the definition of volatile substance included in recently released draft regulations.
 - k) *Local Verification Process* - Require local jurisdictions to provide the bureau a copy of any ordinance or regulation related to commercial cannabis activity and a contact to serve as a liaison between the state licensing entities and the local jurisdiction. Outlines a process by which locals and the state licensing authorities will communicate regarding an applicant for licensure.
- 4) Enhances Tax and Cash Payment Provisions, including:
- a) *Cultivation and Excise Taxes*:
 - i) Creates a methodology to implement the two taxes imposed by Proposition 64, the cultivation tax (9.35 per dry weight ounce for flowers and \$2.75 for leaves) and excise tax (15 percent of the sales price).
 - ii) Clarifies that the cultivation tax shall be imposed when the cannabis or cannabis products enter the commercial marketplace.
 - iii) Requires the distributor to collect and remit the cultivation tax at the time of distribution and create a tax liability for the excise tax at the same time. The excise tax is due and payable 90-days after the transfer of the products.
 - iv) Allows the Board of Equalization (BOE) or its successor agency to determine refund policies to ensure that there is no overpayment of tax.
 - v) The bill does not change the incidence of tax and requires that BOE or its successor agency determine the actual tax.
 - b) *Cash Collection* – Establishes that by January 1, 2018, the Secretary of Business, Consumer Services, and Housing or his or her designee work with

the Legislature, the Department of Consumer Affairs, the Department of Food and Agriculture (CDFA), the State Department of Public Health, and any other related departments to ensure that there is a safe and viable way to collect cash payments for taxes and fees related to the regulation of cannabis activity throughout the state.

- c) *North Coast Office* - Requires that by July 1, 2018, the bureau, in coordination with the Department of General Services, shall establish an office to collect fees and taxes in the County of Humboldt, County of Trinity, or County of Mendocino in order to ensure the safe payment and collection of cash for licenses and taxes in those counties.

5) Environmental clarifications include:

- a) *License Conditions* - Clarifies that cultivation licenses issued by CDFA shall include conditions requested by the Department of Fish and Wildlife (DFW) and the State Water Resources Control Board (SWRCB).
- b) *Adverse Impacts* - Specifies that if DFW or the SWRCB finds that cultivation is causing significant adverse impacts in a watershed, CDFA shall not issue new cultivation licenses or increase the total number of plant identifiers in that watershed.
- c) *Denial of License* – Specifies that licensing entities can deny an application for a licensure or renewal for failure or inability to meet environmental requirements.

6) Makes various other changes, including:

- a) *Advisory Committee* - Specifies that the advisory committee members must include persons who work directly with racially, ethnically, and economically diverse populations.
- b) *Appeals Panel Membership* - Adds two members to the Cannabis Control Appeals Panel; one appointee each from the Senate Committee on Rules and the Speaker of the Assembly. They are in addition to three Governor's appointees that are subject to Senate confirmation.
- c) *Cannabis Cooperatives* – Specifies that certain license types may pool their resources for cannabis farming of no more than four acres total and all members of the association must be disclosed to the licensing agencies. Specifically, the cooperatives must include three or more members (that have not been licensed to operate a cannabis business in another state or country) and form an association for the purpose of:

- i) The cultivation, marketing, or selling of the cannabis products of its members.
 - ii) The growing, harvesting, curing, drying, trimming, packing, grading, storing, or handling of any product of its members.
 - iii) The manufacturing, selling, or supplying to its members of machinery, equipment, or supplies.
- d) *Organics and Appellations Standards* – Requires by 2021, CDFA to develop a California organic designation for cannabis and include standards, practices and varietals as part of their appellations program.
- e) *Non-Storefront Delivery* - Specifies that a retailer shall have a licensed premises which is a physical location, but, that it may be closed to the public and that they can conduct sales exclusively by delivery.
- f) *Diversifies Mutual Fund and Blind Trust* - Allows “blind” investors to have financial interest without requiring background checks.
- g) *Co-Location and the Definition of Premises* - Allows for the co-location of medicinal and adult use cannabis businesses, although, requires that a licensee obtain separate licenses for each type of business. Codifies the definition of premises used in recently released draft medicinal cannabis regulations.
- h) *Product Testing* - Authorizes a licensed cannabis operator with an in-house (non-licensed) testing laboratory to provide testing of cannabis and cannabis products obtained from third party cannabis cultivators and manufacturers prior to those products being sent to a licensed testing laboratory pursuant to this division for final, presale quality assurance. Requires testing of samples to be performed on the final form in which cannabis or cannabis product will be consumed or used.
- i) *Temporary Event License* - Authorizes the bureau to issue a state temporary event license at a county fair or district agricultural association, where people 21 years of age or older could sample cannabis and cannabis products. Temporary event licenses shall only be issued in local jurisdictions that authorize such events.
- j) *State Medical ID Card* - Preserves the State Medical Cannabis ID card.
- k) *Destruction of Product* - Specifies individuals engaging in activity without a license are responsible for the cost of destroying product.
- l) *Temporary Licenses* - Adds section allowing licensing entities to issue temporary licenses if specific requirements are met (including local approval, fee), valid for 120 days with a possible 90 extension.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

According to the Senate Budget and Fiscal Review Committee, this bill appropriates \$3 million to the CHP. In addition there are likely additional regulatory costs to implement various provisions of this bill and offsetting savings from not having to implement two separate regulatory systems. The net impact of additional regulatory costs versus savings is unknown.

SUPPORT: (Verified 6/14/17)

None received

OPPOSITION: (Verified 6/14/17)

None received

Prepared by: Joe Stephenshaw / B. & F.R. /
6/15/17 15:35:44

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