

Date of Hearing: April 18, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

AB 64 (Bonta) – As Amended April 5, 2017

***NOTE:** This bill is double referred, and if passed by this Committee, it will be referred to the Assembly Committee on Revenue and Taxation.*

SUBJECT: Cannabis: medical and nonmedical.

SUMMARY: Amends and adds provisions to the Medical Cannabis Regulation and Safety Act (MCRSA) and Adult Use of Marijuana Act (AUMA) relating to: not for profit entities; delivery of cannabis; state and local licenses; trademarks; offenses for being under the influence of cannabis; grant money disbursement for the California Highway Patrol and the Board of State and Community Corrections; and fund disbursement to the General Fund for enforcement purposes.

EXISTING LAW:

- 1) Establishes the Bureau of Marijuana Control, also referred to as the Bureau of Medical Cannabis Regulation (Bureau), under the Department of Consumer Affairs (DCA), to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of cannabis products. (Business and Professions Code (BPC) § 26000 et seq.; BPC § 19302)

THIS BILL:

- 1) Specifies that licensees under the MCRSA may operate for profit or not for profit.
- 2) Permits a dispensary, producing dispensary, or retailer license to be issued for storefront locations with direct physical access for the public or non-storefront locations without direct physical access for the public.
- 3) Clarifies that a microbusiness license does not authorize the distribution of marijuana or marijuana products except those produced at the licensed cultivation or manufacturing sites of the microbusiness licensee and sold at the licensed retail establishments under the exclusive control of the microbusiness licensee.
- 4) Expands the prohibition on advertising or marketing of marijuana and marijuana products to apply to advertising or marketing on all interstate highways or state highways and would apply those restrictions and requirements, with this expanded prohibition, to all entities regardless of licensure under AUMA. The bill would place similar restrictions and requirements on the advertising or marketing of medical cannabis and medical cannabis products.
- 5) Requires the determination of a state licensing authority that an applicant for a state license is not in compliance with a local nonmedical marijuana business ordinance or regulation, to be

based on a written or electronic notification provided to the licensing authority by the local jurisdiction in response to an inquiry from the licensing authority.

- 6) Requires the licensing authority to deem the applicant to be in compliance with all local nonmedical marijuana business ordinances or regulations if the local jurisdiction does not provide a written or electronic notification, within 90 business days of receiving an inquiry from a state licensing authority.
- 7) Authorizes the use of specified classifications for marks related to medical cannabis and nonmedical cannabis goods and services that are lawfully in commerce under state law.
- 8) Requires the disbursement of funds to the Department of the California Highway Patrol (CHP) and the Board of State and Community Corrections for reasonable costs incurred managing the administration of grants, would advance \$3,000,000 as a loan from the General Fund to the CHP for use in the 2017–18 fiscal year for the purposes for which allocations to the CHP are required until the 2022–23 fiscal year, and requires that loan to be repaid from specified amounts disbursed from the California Marijuana Tax Fund.
- 9) Recasts existing law to provide for separate offenses for a person who is under the influence of marijuana or the combined influence of alcohol and marijuana and a person who is under the influence of a drug other than marijuana or the combined influence of alcohol and a drug other than marijuana.
- 10) Authorizes collectives and cooperatives to operate for profit or not for profit and limits the protection for collectives and collaboratives operating for profit to those collectives and collaboratives that possess a valid seller’s permit from the State Board of Equalization and a valid local license, permit, or other authorization.
- 11) Appropriates an unspecified sum of money from the General Fund for the purposes of enforcement against cultivation, dispensing, and manufacturing of marijuana products that are in violation of state or local laws and ordinances.

FISCAL EFFECT: Unknown. This bill has been keyed fiscal from the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the authors. According to the authors, “In 1996, California was the first state in the nation to allow the use of medical cannabis after voters approved Proposition 215, the Compassionate Use Act, and in 2015, California passed the Medical Cannabis Regulation and Safety Act (MCRSA), the first comprehensive regulatory framework for medical cannabis in the state’s history. The MCRSA established a licensing structure that prioritizes the protections of patients, the public, and the environment, while balancing local control with the needs of existing medical cannabis businesses. Based on the MCRSA framework, voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA), in November 2016, creating a second parallel, but inconsistent, regulatory system. AB 64 seeks to address the questions left unaddressed by AUMA and provide consensus solutions in collaboration with the key stakeholders who joined us in drafting MCRSA.”

Background. *Cannabis Regulation in California.* In 1996, California voters passed Proposition 215, legalizing the use of medical cannabis (MC) in the state. In October 2015, nearly 20 years after the authorization of the use of MC, Governor Jerry Brown signed into law a trio of bills [AB 243 (Wood), Chapter 688, Statutes of 2015, AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood), Chapter 689, Statutes of 2015, and SB 643 (McGuire), Chapter 719, Statutes of 2015] collectively known as MCRSA. MCRSA established the state's first regulatory framework for MC. In 2016, the voters of California passed Proposition 64, the Adult Use of Marijuana Act (AUMA), to legalize the recreational use of cannabis in the state by 2018.

The authors of AUMA sought to make use of much of the regulatory structure and authorities set out by MCRSA while making a few notable changes to the structure being implemented. In addition, the AUMA approved by the voters adopted the January 1, 2018 deadline for state implementation of recreational cannabis in addition to the regulations required in MCRSA that are scheduled to take effect on the same date. The same agencies as under MCRSA remain responsible for implementing regulations for adult use.

Under AUMA, the Department of Consumer Affairs (DCA), continues to serve as the lead regulatory agency for all cannabis, both medical and non-medical, and renames the existing Bureau of Medical Cannabis Regulation as the Bureau of Marijuana Control. AUMA includes 19 different license types compared to the 17 in MCRSA and authorizes DCA (and the Bureau) the exclusive authority to create and regulate a license for transportation of cannabis.

Regulation of Cannabis in Other States. As of 2016, 28 states, the District of Columbia, and Guam have MC programs. Though California was the first to authorize the medical use of cannabis, it was the only state that allowed cannabis-use without a robust state regulatory framework until passage of MCRSA. To date, eight states, Alaska, Colorado, Oregon, Washington, California, Nevada, Massachusetts, Maine, and the District of Columbia have legalized recreational cannabis.

Trademark Registration Policies in Other States. Colorado and Oregon do not have a statute relating to trademark registration, but has promulgated policies that require trademark registration. In 2013, Washington proposed House Bill 1976. The Legislature indicated, “[we] intend to enable Washington to capitalize on its unique position by: Providing the opportunity to register, and thus benefit from, marijuana-related trademarks, trade names, brand names, patents, and copyrights; and directing the resulting revenue towards agricultural production research funded through the life sciences discovery fund.” HB 1976 did not pass, but Washington allows cannabis businesses to register state trademarks. Subsequent legislation in Washington, for example on the subject of licensing agreements between cannabis companies, specifically acknowledges that such companies may register their trademarks pursuant to state law.

Regulatory Provisions Proposed in This Measure. Though AUMA and MCRSA provide a regulatory framework, there are provisions in statute that may need to be clarified or bolstered. According to the authors, the changes proposed in this measure are intended to accomplish this goal. Below, is a list of changes included in this measure:

1. *CHP Funding.* The AUMA allocates funding to develop standards to recognize impairment and impaired driving. This measure advances those funds by one year, to the 2017-18 fiscal year to allow the CHP to begin improving road safety.

2. *Non-Storefront Dispensaries (Delivery Services)*. AUMA and MCRSA only allow for delivery from dispensaries. This measure bifurcates the definition of dispensary into “storefront” and “non-storefront” dispensaries, thereby providing a pathway to licensure and guidance to local governments in allowing their use.
3. *Corporate Restructuring*. Current collectives are not able to operate for profit, under the 2008 Attorney General’s guidelines issued by then Attorney General Jerry Brown, which interpreted the restriction on individual patients and primary caregivers from operating for profit as preventing the entire collective model from seeking a profit. This measure allows current collectives and cooperatives under SB 420 to reorganize as for-profit entities, prior to applying for a state license. The measure also explicitly allows medical cannabis licensees to operate for profit.
4. *Cannabis Advertising Standards*. Expands the restrictions on advertisements in AUMA to MCRSA and non-licensees, and expands the scope of the billboard restrictions from highways that cross state lines to all highways.
5. *Intellectual Property*. Cannabis intellectual property is unable to receive state copyright protections because California statutes direct the state to defer to the United States Patent and Trademark Office (USPTO), which has a blanket policy prohibiting trademarks of Schedule 1 substances under the federal Controlled Substances Act. Medical cannabis businesses have been developing brands, but are unable to protect their intellectual property with trademarks. This measure allows the Secretary of State to issue state trademarks for cannabis and cannabis products.
6. *Local Government Notification*. MCRSA requires a state license after the issuance of a local license. AUMA requires a state license and compliance with local ordinances, but prohibits the state from requiring a local license. This measure creates a mechanism whereby the licensing authorities request local governments inform them whether a proposed licensee is operating in compliance with local ordinances, per AUMA. If the local government does not respond within 90 days, the licensee is presumed to be locally compliant.
7. *Restrict Microbusinesses to Self-Distribution*. Under AUMA, almost any licensees can cross-license as a distributor, or as a microbusiness. This measure restricts a microbusiness to only distribute the cannabis and products they cultivate or manufacture, and only to their own dispensary.
8. *Vehicle Code for Cannabis Impairment*. AUMA reduced the criminal penalties for being prosecuted for a cannabis crime; however, the law was not comprehensive in providing for the penalties for impaired driving and clarifying that driving impaired

by cannabis, or both cannabis and alcohol, was in fact illegal, and subject to additional penalties should a driver cause bodily harm. This measure updates the vehicle code to clarify that operating a motor vehicle and/or causing bodily harm while impaired by cannabis or cannabis and alcohol is a crime.

9. *Open Container Standard for Cannabis.* This measure requires that cannabis be stored in the trunk of a vehicle, or if the vehicle does not have a trunk, in a glovebox with the manufacturer's seal intact.

Current Related Legislation. AB 76 (Chau) of the current Legislative Session restricts online operators of websites from marketing or advertising cannabis to those under the age of 21.

STATUS: This bill has been referred to the Assembly Committee on Business and Professions and will be heard on April 18, 2017.

AB 420 (Wood) of the current Legislative Session requires a license number to be disclosed on all cannabis advertising. *STATUS: This bill has been referred to the Assembly Committee on Business and Professions and will be heard on April 18, 2017.*

Prior Related Legislation. AB 1575 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) of 2015 contained similar language on non-storefront dispensaries, corporate restructuring, and intellectual property. *NOTE: This bill was held in the Senate Appropriations Committee.*

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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