California State Assembly

BUSINESS AND PROFESSIONS

MARC BERMAN
CHAIR

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AGENDA

Tuesday, June 27, 2023
9:30 a.m. -- 1021 O Street, Room 1100

BILLS HEARD IN FILE ORDER

1.	SB 384*	Bradford	Barbering and cosmetology.
2.	SB 540	Laird	Cannabis and cannabis products: health warnings.
3.	SB 612	Ochoa Bogh	Speech-language pathologists.
4.	SB 622	Allen	Cannabis regulation: plant identification program: unique identifier.
5.	SB 667	Dodd	Healing arts: pregnancy and childbirth.
6.	SB 833*	McGuire	Cannabis licensing: cultivation licenses: changing license type: inactive status.

COVID FOOTER

SUBJECT:

All witness testimony will be in person; there will be no phone testimony option for this hearing. You can find more information at www.assembly.ca.gov/committees.

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 384 (Bradford) – As Amended March 20, 2023

SENATE VOTE: 38-0

SUBJECT: Barbering and cosmetology

SUMMARY: Requires the State Board of Barbering and Cosmetology (BBC) to establish a remedial education program, in lieu of a first offense of a health and safety violation.

EXISTING LAW:

1) Establishes the Barbering and Cosmetology Act (Act) to license and regulate barbers, cosmetologists, hairstylists, electrologists, estheticians, and manicurists. (Business & Professions Code. (BPC) §§ 7301 *et seq.*)

2) Establishes the BBC, consisting of seven public members and six members representing the professions, until January 1, 2027. (BPC § 7303)

3) Provides that protection of the public shall be the highest priority for the BBC in exercising its licensing, regulatory, and disciplinary functions. (BPC § 7303.1)

4) Requires the BBC to maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. (BPC § 7313 (a))

5) Provides that the executive officer and authorized representatives shall have access to, and shall inspect the premises of, all schools in which the practice of barbering, cosmetology, or electrolysis is performed on the public. (BPC § 7313 (b))

6) Authorizes the BBC to assess administrative fines for the violation of any section of the Act of any rules and regulations adopted by the BBC. (BPC § 7406)

7) Requires the BBC to establish by regulation a schedule of administrative fines for violations that directly affect consumer safety. (BPC § 7407)

8) Requires the BBC to determine by regulation when a fine shall be assessed to both the holder of the establishment license and the individual licensee for the same violation and requires the BBC to consider the egregiousness of the violation of the health and safety regulations and whether the violation is a repeated violation by licensees within the same establishment. (BPC § 7407.1)

9) Provides that any licensee served with their first citation within three years may avoid the payment of the associated administrative fine by presentation of written proof satisfactory to the BBC, or its executive officer, that the violation been corrected. (BPC § 7409)

THIS BILL:

1) Requires the BBC to establish, by regulation, a BBC-offered remedial education program, in lieu of a first offense of a health and safety violation.

2) Authorizes the BBC to impose a fee to cover the reasonable regulatory cost of administering the program.

FISCAL EFFECT: Pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

Purpose. This bill is sponsored by the **State Board of Barbering and Cosmetology**. According to the author:

> "SB 384 would give workers in the barbering and cosmetology fields a non-disciplinary pathway to address first-time infractions. SB 384 would create remedial education program run by the State Board of Barbering and Cosmetology. The program would allow licensees to take a remedial educational program instead of having a first offense for a health and safety violation on their professional record. This bill is important because multiple violations can be very costly to small businesses and put a license holder at risk of losing their license and therefore losing their ability to work and earn a living. Many of these small businesses are owned by women and people of color. This bill would allow licensees to refresh their knowledge of health and safety requirements by taking an education class and thereby avoid a first violation and prevent future violations ultimately increasing consumer protection."

Background. *State Board of Barbering and Cosmetology.* The BBC is responsible for licensing and regulating barbers, cosmetologists, estheticians, electrologists, manicurists, apprentices, and establishments. The BBC is one of the largest boards in the country, with over 615,000 licensees as of its last sunset review, including over 250,000 active cosmetology licenses. Title protection is provided for the use of the term cosmetologist, barber, and other license categories. The BBC's role is to ensure that applicants for licensure possesses the knowledge and proficiencies required to perform within the scope of their professional practice. An applicant who passes the examination along with all other BBC requirements necessary for licensure, becomes a licensee the same day.

The BBC is required to routinely inspect cosmetology establishments to ensure compliance with the Act, health and safety requirements, and applicable labor laws. In 2022, the BBC issued 6,223 citations for various violations. The citations carried fines ranging from $25 to $1,000. Many violations related to sanitary requirements such as cleaning brushes or equipment. Multiple violations can put a license holder at risk of losing a license and, therefore, the ability to work and earn a living. Often times these licensees are small businesses owned by women and people of color, imperiling the economic opportunity of vulnerable communities. Existing law does not allow a license holder the opportunity to take a remedial education class in order to avoid receiving a first violation on their professional record.

In the BBC's most recent joint sunset review background paper, the committees examined the question of whether the BBC should update its efforts toward establishing a remedial education program. The report recommended that the BBC consider establishing a technical advisory committee on this issue to explore all of the avenues involved with a remedial education proposal. Additionally, it was recommended that the BBC may wish to track specific data on violations licensees to determine if trends exist among licensees for whom language barriers could be at the heart of unintentional violations of the law. In 2022, the BBC decided to re-establish committees within the board to address specific topics, as opposed to having various technical advisory committees. This topic was debated by the Enforcement and Inspections Committee. In October 2022 and in January 2023, the Committee recommended to the full BBC to pursue remedial education authority.

This bill would require the BBC to establish and offer a remedial education program. Licensees who are found to have committed their first offense of a health and safety violation would be eligible to complete this program in lieu of a citation and fine. This proposal could allow licensees the opportunity to refresh their knowledge of health and safety requirements and avoid a first violation on their professional record. This pathway to avoid a first-time offense with the BBC could preserve a vulnerable licensee population's ability to work.

Prior Related Legislation.

SB 803 (Roth, Chapter 648, Statutes of 2021) continued the operations of the Board of Barbering and Cosmetology (BBC) and made various technical changes, statutory improvements, and policy reforms to the Barbering and Cosmetology Act (Act) based on the recent joint sunset review oversight of BBC by the Senate Committee on Business, Professions, and Economic Development and Assembly Committee on Business and Professions (Committees).

AB 326 (Salas, Chapter 312, Statutes of 2017) required the health and safety course for additionally cover physical and sexual abuse awareness.

AB 181 (Bonilla, Chapter 430, Statutes of 2015) extended the operation of the BBC and required the BBC to conduct a review of its current 1,600-hour curriculum requirements for the cosmetologist license.

SB 1482 (Polanco, Chapter 1148, Statutes of 2002) reinstated the Board of Barbering and Cosmetology.

ARGUMENTS IN SUPPORT:

This bill is sponsored by the **California Board of Barbering and Cosmetology (**BBC). The BBC writes that, "On April 17, 2023 the California State Board of Barbering and Cosmetology (Board) voted to take a SUPPORT position SB 384 (Bradford), which would require the Board to establish a remedial education program in lieu of a first offense of a health and safety violation. This bill would benefit licensees by reducing or removing administrative fines for a first offense of a health and safety violation, while still ensuring consumer protection by requiring licensees to complete a remedial education program instead.

This measure is also supported by the **Professional Beauty Federation of California** (PBFC). PBFC writes the following in support of the bill: "The Professional Beauty Federation of California is a broad-based trade association formed in 1999 that represents every sector of Californian's diverse beauty and barbering industry. Consumer protection is the primary mission of our State regulatory board, and raising the professionalism of our industry is the PBFC's mission, so we are often on parallel tracks with the State Board of Barbering and Cosmetology (BBC). As such, we are mindful of any legislation impacting the law and regulations governing our industry administrated by our State Board. We support the premise of SB 384 (Bradford), believing many licensees cited for a first-time State Board regulatory violation could learn from their mistake and not repeat it in the future with the appropriate remedial education. This will raise our industry's professional standards while further enhancing protections for consumers of beauty/barbering services."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

State Board of Barbering and Cosmetology *(Sponsor)*
Professional Beauty Federation of California

REGISTERED OPPOSITION:

None on File.

Analysis Prepared by: Annabel Smith / B. & P. / (916) 319-3301

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 540 (Laird) – As Amended June 19, 2023

SENATE VOTE: 40-0

SUBJECT: Cannabis and cannabis products: health warnings

SUMMARY: Requires the Department of Cannabis Control (DCC) to regularly reevaluate its regulations and determine whether additional warning labels are necessary to reflect evolving science regarding the risks of cannabis use, and requires the DCC to consult with the Department of Public Health (CDPH) to create a brochure that includes steps for safer use of cannabis.

EXISTING LAW:

1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to provide for a comprehensive regulatory framework for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) §§ 26000 *et seq.*)

2) Establishes the DCC within the Business, Consumer Services, and Housing Agency (previously established as the Bureau of Cannabis Control, the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation), for purposes of administering and enforcing MAUCRSA. (BPC § 26010)

3) Requires the DCC to convene an advisory committee to advise state licensing authorities on the development of standards and regulations for legal cannabis, including best practices and guidelines that protect public health and safety while ensuring a regulated environment for commercial cannabis activity that does not impose such barriers so as to perpetuate, rather than reduce and eliminate, the illicit market for cannabis. (BPC § 26014)

4) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements as well as any applicable local laws and ordinances. (BPC § 26030)

5) Provides for twenty total types of cannabis licenses including subtypes for cultivation, manufacturing, testing, retail, distribution, and microbusiness. (BPC § 26050)

6) Requires cannabis or cannabis products purchased by a customer to be placed in an opaque package prior to leaving a licensed retail premises. (BPC § 26070.1)

7) Prohibits cannabis and cannabis product packages and labels from being made to be attractive to children. (BPC § 26120(b))

8) Requires all cannabis and cannabis product labels and inserts to include, among other specified information, the following statement prominently displayed in a clear and legible fashion, with the statement relating to intoxication delay limited to cannabis products:

"GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS PRODUCTS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

(BPC § 26120(c))

9) Requires the DCC to promulgate regulations setting standards for the manufacturing, packaging, and labeling of all manufactured cannabis products, including a requirement that products be provided to customers with sufficient information to enable the informed consumption of the product, including the potential effects of the cannabis product and directions as to how to consume the cannabis product, as necessary. (BPC § 26130)

10) Prohibits a cannabis licensee from doing any of the following:

    a) Advertising or marketing in a manner that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression.

    b) Publishing or disseminating advertising or marketing containing any statement concerning a brand or product that is inconsistent with any statement on its labeling.

    c) Publishing or disseminating advertising or marketing containing any statement, design, device, or representation which tends to create the impression that the cannabis originated in a particular place or region, unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement.

    d) Advertising or marketing on a billboard or similar advertising device located on an Interstate Highway or on a State Highway which crosses the California border.

    e) Advertising or marketing cannabis or cannabis products in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products.

    f) Publishing or disseminating advertising or marketing that is attractive to children.

    g) Advertising or marketing cannabis or cannabis products on an advertising sign within 1,000 feet of a day care center, school providing instruction in kindergarten or any grades 1 to 12, inclusive, playground, or youth center.

    h) Publishing or disseminating advertising or marketing while the licensee's license is suspended.

    (BPC § 26152)

11) Prohibits a cannabis licensee from including on the label of any cannabis or cannabis product or publishing or disseminating advertising or marketing containing any health-related statement that is untrue in any particular manner or tends to create a misleading impression as to the effects on health of cannabis consumption. (BPC § 26154)

THIS BILL:

1) Requires the DCC to reevaluate its existing regulations, on or before July 1, 2025, to determine whether any additional warnings are necessary to reflect evolving science, and requires the DCC to adopt regulations for cannabis and cannabis product labels or inserts reflecting the evolving science regarding the risks that cannabis use may cause consumers.

2) Subsequently requires the DCC to again reevaluate its regulations on or before January 1, 2030 and then every five years thereafter to further determine whether requirements imposed in the DCC's regulations reflect the state of the evolving science on cannabis health effects and on effective communication of health warnings.

3) Authorizes and recommends that the DCC use research funded through the Cannabis Tax Fund that evaluates labeling and packaging, and authorizes the DCC to commission new research to assess the efficacy of warning label requirements and approaches to identify future best practices for cannabis health warning labels that are most effective in changing knowledge and intent to consume or consumption.

4) Allows for cannabis or cannabis products manufactured before July 1, 2025 to continue to be sold until July 1, 2026, without meeting new labeling requirements imposed by the DCC on or before July 1, 2025.

5) Subsequently allows cannabis or cannabis products to continue to be sold for up to 12 months following the effective date of new labeling regulations adopted by the DCC, if they comply with the regulations in effect prior to the enactment of the new regulations.

6) Requires the DCC to consult with the CDPH on or before January 1, 2025 to create and publish a single-page flat or folded brochure that includes steps for safer use of cannabis.

7) Provides that the DCC's informational brochure shall include, at a minimum, the following:

    a) Information about the pharmacological effects of cannabis use.

    b) Information on the implications and risks associated with high potency cannabis products; the potential for THC to exacerbate certain mental health conditions; cannabis use by minors; and cannabis use by pregnant and breastfeeding persons.

8) Requires the brochure to be printed in a type size not smaller than 12 points. Printing and distribution shall be the responsibility of the licensee.

9) Requires the DCC to either recertify the information on the brochure or provide updated language that accurately reflects the state of the evolving science on cannabis health effects and safer use of cannabis every five years beginning January 1, 2030.

10) Beginning March 1, 2025, requires a retailer or microbusiness selling, or person delivering, cannabis goods to a consumer to prominently display the brochure, including printed copies, at the point of sale or final delivery in person and online at time of online purchases, and to offer each new consumer a copy of the brochure at the time of first purchase or delivery.

FISCAL EFFECT: According to the Senate Committee on Appropriations, the DCC reports costs of approximately $610,000 in the first year of implementation and $586,000 ongoing, and the CDPH reports ongoing annual costs of approximately $94,000 to support the collaboration with the DCC on the brochure and review existing research with the advisory committee.

COMMENTS:

Purpose. This bill is sponsored by the **California Cannabis Industry Association**. According to the author:

> "Safe cannabis use is essential to promote responsible and informed consumption. To achieve this SB 540 requires the DCC and the DPH to develop an informational brochure that will serve as a valuable resource for individuals and new customers interested in cannabis use. The brochure will provide crucial information on consumption and outline responsible use practices, such as avoiding cannabis use during pregnancy. Overall, an informational brochure on safe cannabis use will empower individuals with knowledge, promoting responsible consumption and minimizing potential harm."

Background.

Brief History of Cannabis Regulation in California. Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. This regulatory scheme was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program. After several years of lawful cannabis cultivation and consumption under state law, a lack of a uniform regulatory framework led to persistent problems across the state. Cannabis's continued illegality under the federal Controlled Substances Act, which classifies cannabis as a Schedule I drug ineligible for prescription, generated periodic enforcement activities by the United States Department of Justice. Threat of action by the federal government created apprehension within California's cannabis community.

After several prior attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis. While entrusting state agencies to promulgate extensive regulations governing the implementation of the state's cannabis laws, MCRSA fully preserved local control. Under MCRSA, local governments may establish their own ordinances to regulate medicinal cannabis activity. Local jurisdictions could also choose to ban cannabis establishments altogether.

Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). The passage of the AUMA legalized cannabis for non-medicinal adult use in a private home or licensed business; allowed adults 21 and over to possess and give away up to approximately one ounce of cannabis and up to eight grams of concentrate; and permitted the personal cultivation of up to six plants. The proponents of the AUMA sought to make use of much of the regulatory framework and authorities set out by MCRSA while making a few notable changes to the structure still being implemented.

In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was passed to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws. On January 16, 2019, the state's three cannabis licensing authorities—the Bureau of Cannabis Control, the California Department of Food and Agriculture, and the CDPH—officially announced that the Office of Administrative Law had approved final cannabis regulations promulgated by the three agencies respectively.

In early 2021, the Department of Finance released trailer bill language to create a new Department with centralized authority for cannabis licensing and enforcement activities. This new department was created through a consolidation of the three prior licensing authorities' cannabis programs. As of July 1, 2021, the Department has been the single entity responsible for administering and enforcing the majority of MAUCRSA. New regulations went into effect on January 1, 2023 to effectuate the consolidation and make other changes to cannabis regulation.

Labeling Requirements for Cannabis Packaging. Language enacted as part of the original MCRSA legislation in 2015 set strict standards for cannabis packaging and labeling, including inclusion of specific cautionary statements. Proposition 64 then recodified nearly identical language for its own mandated label content, with a handful of minor variations reconciled when SB 94 merged MCRSA and the AUMA into MAUCRSA. Under current law, all cannabis product labels must display the following statement in a clear and legible fashion, in bold print:

> *GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS PRODUCTS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION.*

In addition to the above statement, MAUCRSA requires certain factual information about the product's ingredients and contents to be listed, as well as information associated with a unique identifier for purposes of identifying and tracking the cannabis goods. MAUCRSA also authorizes the DCC to set its own additional requirements for cannabis packaging and labeling. Regulations promulgated by the DCC and its predecessors have set additional labeling standards. For example, all required labels must be "unobstructed and conspicuous" in at least 6 point type size, and must be written in English. Additional language is required for specific product types.

MAUCRSA explicitly prohibit the packages and labels for cannabis goods from being made to be attractive to children. The DCC's regulations specifically prohibit cannabis goods labeling from containing content that is, or designed to be, attractive to individuals under the age of 21 using the same criteria as provided for advertising restrictions. This includes a ban on labeling that uses depictions of minors, cartoons, candy packaging, or other images popularly used to advertise to children.

The DCC's regulations also prohibit the labeling on cannabis goods from containing statements that are potentially deceptive or false. Specifically, current regulations prohibit "any health-related statement that is untrue or misleading" and require the following:

> "Any health-related statement must be supported by the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), and for which there is significant scientific agreement among experts qualified by scientific training and experience to evaluate such claims."

This bill would require the DCC to reevaluate its existing regulations to determine whether to establish new labeling requirements on packaging for cannabis goods. In addition to all the information currently required for cannabis labels, including the warning statement mandated under MAUCRSA, this bill would require the DCC to consider adding additional warnings that are necessary to reflect evolving science regarding the risks that cannabis use may cause consumers. The first reevaluation would be required to take place on or before July 1, 2025, and additional reevaluations would be required every five years beginning January 1, 2030.

Consumer Education. The DCC and its predecessors have engaged in public awareness campaigns to improve consumer safety, combat the illicit market, and encourage responsible consumption. In June of 2019, the Bureau of Cannabis Control launched a statewide public information campaign called "Get #weedwise." This campaign encouraged cannabis users to purchase products only from the legal market and warn against the health hazards associated with illicit cannabis. The state's public awareness campaigns have included billboards encouraging consumers to verify the legal status of cannabis sellers, social media graphics containing information about safe consumption practices, and educational YouTube videos about the importance of accurate labeling and how to verify a retailer's license using a QR code.

In addition, the DCC's website features a number of consumer guides to promote safe cannabis consumption. One conspicuously linked webpage titled "Responsible cannabis use" contains detailed information about "How to use cannabis safely." The website specifically encourages consumers to "Be aware how edibles affect you, "Be cautious when inhaling cannabis," "Do not use cannabis while pregnant or breastfeeding," and "Do not get behind the wheel." The DCC's website hosts additional information about safely storing cannabis at home and keeping children and pets safe.

This bill would require the DCC to create an educational brochure, in consultation with the CDPH, aimed at further educating consumers about the health effects and risks of cannabis use. The brochure would be required to include information about the pharmacological effects of cannabis use, as well as information about the implications and risks associated with, but not limited to, all of the following:

- High potency cannabis products.
- The potential for THC to exacerbate certain mental health conditions.
- Cannabis use by minors.
- Cannabis use by pregnant and breastfeeding persons.

Under the bill, the DCC would be required to create and post the brochure no later than January 1, 2025. The DCC would then be required to either recertify the information in the brochure or provide updated language that accurately reflects the state of the evolving science on cannabis health effects and safer use of cannabis. The bill requires that the review of the brochure be done in conjunction with the review required for the DCC's cannabis product labeling regulations.

Beginning March 1, 2025, this bill would require every retailer or microbusiness engaged in selling or delivering cannabis goods to prominently display the brochure, including printed copies, at the point of sale or final delivery in person, and online at time of online purchase. Responsibility for printing and distributing the pamphlet would be placed on the licensee. Cannabis sellers would be further required to offer each new consumer a copy of the brochure at the time of first purchase or delivery.

Current Related Legislation.

AB 1207 (Irwin) would place restrictions on the advertising, marketing, packaging, and labeling of cannabis and cannabis products and ban the use of flavors in cannabis or cannabis products intended for use by inhalation or combustion. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation.

SB 1097 (Pan) from 2022 would have required the DCC to adopt regulations to require additional cannabis and cannabis product packaging warning labels about mental health risks of cannabis use. *This bill died on the Assembly Floor*.

AB 1894 (L. Rivas, Chapter 390, Statutes of 2022) places additional requirements and restrictions for the packages and labels of integrated cannabis vaporizers.

AB 273 (Irwin) from 2021 would have placed numerous restrictions on the content of outdoor advertising by cannabis businesses and required the suspension of the license of any licensee who violates those restrictions for one year. *This bill failed passage in this committee.*

AB 1417 (B. Rubio) from 2019 would have established civil penalties for violating specified cannabis marketing or advertising requirements, and would have specified disbursement procedures for civil penalties. *This bill was held under submission on the Senate Appropriations Committee's suspense file.*

SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017) combined AUMA and MCRSA into a unified system for the regulation of cannabis, MAUCRSA.

ARGUMENTS IN SUPPORT:

The **California Cannabis Industry Association** (CCIA) is sponsoring this bill. The CCIA writes jointly with the **Cannabis Distribution Association** and the **California Cannabis Manufacturers Association**: "While we are proud of collective efforts to support the integrity of the legal cannabis market, concerns persist over whether the existing labeling requirements for cannabis are sufficient to inform consumers and deter youth access. Evolving science on the risks and benefits of cannabis also necessitates an ongoing review of existing labeling requirements and the development of other educational materials." The letter goes on to state: "SB 540 represents the legal cannabis industry's solution to concerns that existing consumer education may still be lacking and compliments policy discussions currently underway within the DCC and the DPH, by creating a process that guarantees consumers in all licensed jurisdictions will have access to up-to-date, critical safety information and educational materials. It will also ensure that licensed cannabis products contain uniform and consistent information, while also allowing regulators to strengthen and refine laws according to science and ongoing research."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUES:

As drafted, this bill would allow for cannabis goods to continue to be sold for up to one year following the effective date of any new labeling requirement regulations adopted by the DCC without having to comply with those regulations. While in most cases this timeline is likely reasonable and appropriate, there may be instances where urgent circumstances justify a need for products to come into compliance more quickly. The author may wish to consider amending the bill to allow for a shorter grace period to be prescribed by the DCC as part of its rulemaking.

AMENDMENTS:

To allow the DCC to provide for a shorter grace period for cannabis products to come into compliance with new labeling requirement regulations, amend subdivision (d) in Section 2 of the bill as follows:

> *(d) Cannabis or cannabis products manufactured before January 1, 2030, and every year thereafter when new labeling requirements are imposed by the regulations adopted pursuant to subdivision (a) may be sold for up to 12 months from the effective date of those regulations, or for a shorter time prescribed by the department in those regulations, if they comply with the regulations in effect prior to the enactment of the new regulations.*

REGISTERED SUPPORT:

California Cannabis Industry Association *(Sponsor)*
Big Sur Farmers Association
California Academy of Family Physicians
California Cannabis Manufacturers Association
California NORML

Cannabis Distribution Association
Humboldt County Growers Alliance
Kiva Confections
Lompoc Valley Cannabis Association, Santa Barbara County
Mendocino Cannabis Alliance
Nevada County Cannabis Alliance
Origins Council
The Parent Company
Trinity County Agriculture Alliance
Weedmaps

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 612 (Ochoa Bogh) – As Amended June 15, 2023

SENATE VOTE: 40-0

SUBJECT: Speech-language pathologists

SUMMARY: Clarifies that a licensed speech-language pathologist (SLP) who obtained written verification of competency to perform Flexible Fiberoptic Endoscopic Evaluation of Swallowing (FEES) procedures prior to January 1, 2023, is deemed to have met the current verification requirements to perform FEES procedures.

EXISTING LAW:

1) Establishes the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act (Act) for the purposes of regulating SLPs, audiologists, and hearing aid dispensers. (Business and Professions Code (BPC) §§ 2530 *et seq*.)

2) Establishes, until January 1, 2023, the Speech Language Pathology, Audiology, and Hearing Aide Dispensers Board (Board) within the Department of Consumer Affairs to enforce and administer the Act. (BPC § 2531)

3) Specifies that instrumental procedures within the scope of practice for speech-language pathology are the use of rigid and flexible endoscopes to observe the pharyngeal and laryngeal areas of the throat in order to observe, collect data, and measure the parameters of communication and swallowing as well as to guide communication and swallowing assessment and therapy. (BPC § 2530.2 (e)(1))

4) Requires any observation of an abnormality to be referred to a physician and surgeon. (BPC § 2530.2 (e)(2))

5) Prohibits a licensed SLP from performing a FEES procedure unless they have received written verification from a board-certified otolaryngologist that the licensed SLP has performed a minimum of 25 FEES procedures and is competent prior to performing a FEES procedure. Specifies that of these 25 procedures, the first 10 procedures must be supervised by a licensed physician and surgeon (licensed physician) who performs nasal endoscopy as part of their practice and the subsequent 15 procedures must be supervised by *either* a licensed physician who performs nasal endoscopy as part of their practice or by another licensed SLP who is verified as competent in performing FEES procedures. (BPC § 2530.2 (f))

6) Requires a licensed SLP to have the written verification on file and readily available for inspection upon request by the Board. (BPC § 2530.2 (f))

7) Authorizes a licensed SLP with written verification on file to perform a FEES procedure only upon the orders of a licensed physician at a location based on the patient's medical needs, as specified. (BPC § 2530.2 (f))

8) Limits where a licensed SLP can perform FEES procedures and requires those settings to have protocols for emergency medical backup procedures, including a licensed physician or other appropriate medical professionals being readily available. (BPC § 2530.2 (g)(1))

9) Specifies that a licensed SLP performing FEES procedures on patients who have contraindications to the procedure must consult and document clearance with the licensed physician that the licensed SLP can safely perform the procedure. (BPC § 2530.2 (g)(2))

THIS BILL:

1) Clarifies that a licensed SLP who holds a written verification that was issued before January 1, 2023 is deemed to have met the requirements to perform FEES procedures.

2) Makes various non-substantive, technical and conforming changes.

FISCAL EFFECT: This bill is keyed non-fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the *California Speech Language Hearing Association*. According to the author:

> Questions had previously arisen over whether the authorization by an Ear, Nose, and Throat (ENT) doctor needed for a SLP to perform the FEES procedure was a one-time authorization based on the SLP's competency or required each time a SLP had to perform the procedure. This had resulted in some instances where an SLP was not able to perform the needed evaluation. SB 1453 (Ochoa Bogh, 2022) clarified this issue but did not specify whether the new provisions were retroactive.
>
> In March of 2023, the Speech-Language Pathology and Audiology Board announced they interpreted SB 1453 in such a way that they would apply the bill's provisions to all SLPs. This means that SLPs who were performing FEES prior to 2023 may no longer be able to perform them. [This bill] clarifies that the provisions within SB 1453 (Ochoa Bogh, 2022) are prospective (applying only to SLPs who received written verification of competency on or after Jan. 1st, 2023) and not retroactive.

Background.

Speech-language pathologists (SLP). According to the Board:

> [S]peech-language pathologists provide services in the areas of speech, language, voice, cognition, fluency, and swallowing disorders to individuals across the lifespan. They see individuals who may have language difficulties with verbal expression, auditory comprehension, reading comprehension, and/or written expression. These difficulties could be the result of a stroke, brain injury, or other neurogenic causes. Speech-language

> pathologists perform instrumental procedures within their scope of practice (e.g., Motion fluoroscopic evaluation of swallowing by cine or video recording, FEES procedures by cine or videorecording, laryngoscopy with stroboscopy). Speech-language pathologists coordinate care with otolaryngologists and physicians for such procedures. Speech-language pathologists also provide aural rehabilitation for individuals who are deaf or hard of hearing and provide therapy in the augmentative and alternative communication domain for individuals with diagnoses such as autism spectrum disorder and progressive neurological disorders. Speech-language pathologists work independently and collaboratively on interdisciplinary teams with other school or health care professionals in a range of settings including schools, medical, community-based facilities, and in private practice.[1]

SLPs are licensed and regulated by the Board. To qualify for licensure, applicants are required to submit fingerprints to undergo a background check; hold a Master's degree or equivalent in speech-language pathology from an accredited educational institution; have completed 300 hours of supervised clinical practicum in three different clinical settings; have completed 36 weeks of full time or 72-weeks part time supervised professional experience while holding a Required Professional Experience temporary license; and pass the national speech-language pathology exam administered by the Educational Testing Service Praxis Series with a specified minimum score.[2]

Flexible Fiberoptic Endoscopic Evaluation of Swallowing (FEES) Procedure. A FEES procedure is one of two primary instrumental imaging procedures used to assess a patient's swallowing function.[3] During a FEES procedure, a licensed SLP or physician passes a thin, flexible instrument called an endoscope through the patient's nose and down into the throat. An anesthetic may be sprayed into the nose to numb the area. The endoscope is equipped with a light and camera which allows the speech-language pathologist or physician to evaluate the patient's ability to swallow saliva, food, and liquids. Afterwards, the scoped is pulled out of the throat and nose. The FEES procedure takes about 20 minutes to complete and is performed in medical-based settings such as a hospital, clinic, or doctor's office.[4]

A FEES procedure may be needed by individuals who lack the muscular coordination to swallow normally. This condition is called dysphagia, which can be caused by head and neck cancer, head injuries, conditions that lead to decreased saliva (e.g. Sjogren's syndrome), Parkinson's disease or other neurologic conditions, muscular dystrophy disorders, and an obstruction in the

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[1] Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board. (2021). Sunset Review Report 2021. https://www.speechandhearing.ca.gov/forms_pubs/sunset_review_report_2022.pdf

[2] Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. (n.d.). *Qualifications For Licensure Speech-Language Pathologists*. Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. https://www.speechandhearing.ca.gov/applicants/app_pack_slp.shtml

[3] Langmore, S. E., Scarborough, D. R., Kelchner, L. N., Swigert, N. B., Murray, J., Reece, S., Cavanagh, T., Harrigan, L. C., Scheel, R., Gosa, M. M., & Rule, D. K. (2022). Tutorial on Clinical Practice for Use of the Fiberoptic Endoscopic Evaluation of Swallowing Procedure With Adult Populations: Part 1. American journal of speech-language pathology, 31(1), 163–187. https://doi.org/10.1044/2021_AJSLP-20-00348

[4] Abrams, R. (n.d.). *Fiberoptic Evaluation of Swallowing*. John Hopkins Medicine. https://www.hopkinsmedicine.org/health/treatment-tests-and-therapies/fiberoptic-evaluation-of-swallowing#:~:text=An%20anesthetic%20will%20be%20sprayed%20in%20your%20nose.,a%20gagging%20sensation.%20The%20anesthetic%20can%20minimize%20this.

esophagus.[5] Dysphagia can result in aspiration (i.e. food or liquid entering the airway or lungs), which can lead to pneumonia and other adverse health effects.

Risks of FEES procedures include nosebleed, discomfort, gagging or vomiting, brief closure of the patient's airway (laryngospasm), and aspiration, although risks vary by age, health, and underlying conditions.[6] As a precaution, some patients may be instructed to stop taking blood-thinning and other medications prior to the FEES procedure. Most patients are able to drive themselves home and resume normal activities after a FEES procedure.[7]

According to a recent article published in the *American Journal of Speech Language Pathology* titled, "Tutorial on Clinical Practice for Use of the Fiberoptic Endoscopic Evaluation of Swallowing Procedure with Adult Populations: Part 1":

> FEES requires an advanced practice skill level derived from clinical experience and a comprehensive critical thinking skill set. Therefore, additional training is necessary to develop the essential knowledge required to safely and effectively preform and interpret the findings of the procedure. Acquisition of the actual technical skills needed to handle a flexible endoscope effectively during an FEES procedure often starts via continuing education (CE) activity but must be sufficiently reinforced and practiced with a clinical setting(s) to gain competency.[8]

This committee is aware of at least two courses, ranging from two to five days, which offer specialized training for licensed SLPs wishing to obtain written verification of competency.[9] The sponsor reports that most training courses offer hands-on clinical training for licensed SLPs to practice passing an endoscope through the nose and into the throat of healthy volunteers. If licensed SLPs are unable to complete the requisite 25 procedures, they can continue their training under the supervision of a qualified licensed physician or SLP.

Prior to the enactment of SB 1453 (Ochoa Bogh), Chapter 450, Statutes of 2022, California law required licensed SLPs to perform a minimum of 25 FEES procedures and obtain written verification from a board-certified otolaryngologist attesting to their competency. At that time, the law did not specify which types of health care professionals were required to supervise the requisite 25 FEES procedures. SB 1453, in part, specified that of the 25 FEES procedures, the first 10 must be supervised by a licensed physician who performs nasal endoscopy as part of their practice (e.g. an otolaryngologist) and that the subsequent 15 FEES procedures could be supervised by *either* a qualifying licensed physician or by another licensed SLP who previously obtained written verification of their own competency to perform FEES procedures. Shortly after these specifications were enacted, the Board raised concerns about whether the new supervisorial requirements applied retroactively. This bill authorizes licensed SLPs who received written

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[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Langmore, S. E., Scarborough, D. R., Kelchner, L. N., Swigert, N. B., Murray, J., Reece, S., Cavanagh, T., Harrigan, L. C., Scheel, R., Gosa, M. M., & Rule, D. K. (2022). Tutorial on Clinical Practice for Use of the Fiberoptic Endoscopic Evaluation of Swallowing Procedure With Adult Populations: Part 1. American journal of speech-language pathology, 31(1), 163–187. https://doi.org/10.1044/2021_AJSLP-20-00348
[9] SEC Medical Speech Pathology Consulting & Training; Langmore FEES

verification of competency prior to January 1, 2023, to continue performing FEES procedures without obtaining new written verification.

Prior Related Legislation.

SB 1453 (Ochoa Bogh), Chapter 450, Statutes of 2022, as it relates to this bill, specified that a licensed SLP is required to perform a minimum of 25 supervised FEES procedures to verify their competence before independently performing FEES procedures. Of these 25 procedures, the first 10 procedures must be supervised by a licensed physician who performs nasal endoscopy as part of their practice and the subsequent 15 procedures must be supervised by either a licensed physician who performs nasal endoscopy as part of their practice or by another licensed SLP who is verified as competent in performing FEES procedures.

AB 2686 (Berman), Chapter 415, Statutes of 2022, extended the sunset date for the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board until January 1, 2027, and made additional technical changes, statutory improvements, and policy reforms in response to issues raised during the sunset review oversight process.

SB 1379 (O'Connell) Chapter 485, Statutes of 2002, authorized licensed SLPs who meet specified criteria to perform flexible fiberoptic nasendoscopic procedures direct authorization of a board-certified otolaryngologist and the supervision of a physician in an acute care setting, as defined, that has protocols for emergency medical backup procedures, as specified.

SB 1285 (Aanestad) Chapter 153, Statutes of 2006, authorized licensed SLPs that meet specified criteria to perform flexible fiberoptic nasendoscopic procedures under the direct authorization of a board-certified otolaryngologist and the supervision of a physician in any setting that requires the facility to have protocols for emergency medical backup procedures, as specified.

ARGUMENTS IN SUPPORT:

The *California Speech Language Hearing Association* writes in support:

> [This bill] is needed because there has been confusion in the field on whether licensed speech language pathologists previously qualified under prior law to perform flexible trans nasal endoscopic procedures and certified to perform Flexible Endoscopic Evaluation of Swallowing (FEES) would need to meet the new verification requirement established in SB 1453. Because of inconsistent interpretation of the statute, some sites have suspended FEES, thus depriving patients of a valuable assessment. Training of speech language pathologists to conduct FEES has also been curtailed.
>
> [This bill] will clarify that the new requirements established through SB 1453 [of 2022] apply to speech language pathologists who were not verified as competent to perform FEES prior to January 1, 2023. Those speech language pathologists who were licensed, trained, and verified competent to perform FEES prior to 2023, will be able to continue.

ARGUMENTS IN OPPOSITION:

None on file.

IMPLEMENTATION ISSUES:

Amendments taken on June 15, 2023, include a drafting error. The verification requirements referenced in BPC § 2530.2(f)(2) are in BPC § 2530.2(f)(1), whereas paragraph (1) of subdivision (g) is related to the settings in which a licensed SLP can perform FEES procedures.

AMENDMENTS:

To correct the aforementioned drafting error, amend this bill as follows:

On page 4 of the bill, after line 9:

A licensed speech-language pathologist who holds a written verification pursuant to this subdivision that was issued before January 1, 2023, shall be deemed to meet the requirements described in paragraph (1) of subdivision ~~(g).~~ *(f)*.

REGISTERED SUPPORT:

California Speech Language Hearing Association
2 individuals

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Kaitlin Curry / B. & P. / (916) 319-3301

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 622 (Allen) – As Amended June 15, 2023

SENATE VOTE: 37-0

SUBJECT: Cannabis regulation: plant identification program: unique identifier

SUMMARY: Authorizes the Department of Cannabis Control (DCC) to determine by regulation how cannabis plant unique identifiers shall be recorded.

EXISTING LAW:

1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to provide a comprehensive regulatory framework for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) §§ 26000-26325)

2) Establishes the DCC within the Business, Consumer Services, and Housing Agency (previously established as the Bureau of Cannabis Control, the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation), for purposes of administering and enforcing MAUCRSA. (BPC § 26010)

3) Requires the DCC to implement a unique identification program for cannabis and cannabis products. (BPC § 26069(a)(1))

4) Specifies that the unique identification program must include the identification of permitted cannabis plants at a cultivation site during the cultivation period and requires that a unique identifier be issued for each cannabis plant and attached at the base of each plant or as otherwise required by law or regulation. (BPC § 26069(a)(2))

5) Specifies that unique identifiers can only be issued to DCC licensees. (BPC § 26069(b))

6) Requires information associated with the assigned unique identifier and licensee to be included in the DCC's track and trace program. (BPC § 26069(c))

7) Authorizes the DCC to charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each cannabis plant. (BPC § 26069(d))

8) Requires the DCC to take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons. (BPC § 26069(e))

9) Authorizes a city, county, or city and county to administer unique identifiers and associated identifying information *in addition to* the DCC-issued unique identifiers.

10) Exempts cannabis cultivated for personal or medicinal use from the requirement to be assigned a unique identifier. (BPC § 26069(f))

THIS BILL:

1) Authorizes the unique identifier to be recorded in a manner determined by the DCC by regulation.

2) States that the bill furthers the purpose and intent of the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64).

FISCAL EFFECT: According to the Senate Appropriations Committee pursuant to Senate Rule 28.8, no significant state costs anticipated.

COMMENTS:

Purpose. This bill is sponsored by *CannaCraft, Inc.* According to the author:

> [This bill] will provide more flexibility to the Department of Cannabis Control to regulate how cannabis plants are tagged to ensure easy identification of plants for effective enforcement by inspectors and compliance by cultivators, while minimizing wasteful and expensive single-use tags. The bill leaves room for emerging alternatives and methods such as reusable digital tags or requiring cultivators to provide a centralized list of plants to satisfy the unique identifier requirement.

Background.

Department of Cannabis Control (DCC). Since July 1, 2021, the DCC has been the single entity responsible for administering and enforcing the majority of California's cannabis laws, collectively known as MAUCRSA. The DCC is additionally responsible for licensing and regulating cannabis businesses, including the cultivation, manufacture, testing, transportation, labeling, and sale of cannabis and cannabis products in this state.[1]

Plant Tags with Unique Identifiers. Existing law requires the DCC to implement a unique identification program for cannabis and cannabis products. DCC regulations specify that immature cannabis plants are assigned a plant tag, which is required by regulation to be visible and within clear view of an individual standing next to the lot containing the immature plants.[2] Immature plants transferred from a licensed nursery for retail tag are transferred in a package with a package tag. Upon receipt, the retail licensee is required to remove the package tag and assign a plant or new package tag, as applicable. Mature plants are required to be tagged with a plant tag that is attached to the main stem at the base of each plant, placed so that it is visible and within clear view of an individual standing next to the mature plant.[3] Plant tags are prohibited from being removed until the plant is harvested, destroyed, or disposed of.

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[1] Department of Cannabis Control. (n.d.). *About the Department of Cannabis Control*. Department of Cannabis Control. Retrieved April 6, 2023, from https://cannabis.ca.gov/about-us/about-dcc/
[2] Cal. Code Regs. Tit. 4, § 15048.4
[3] Ibid.

DCC currently procures its plant tags from Metrc, its track and trace vendor. Equipped with radio-frequency identification (RFID) technology, Metrc asserts that "every time the tag is scanned, its unique ID is verified, making it nearly impossible to counterfeit."[4] As pictured below, each tag identifies the following: 1) Facility Name; 2) Order Number (for tags orders placed through Metrc); 3) Facility License Number; 4) Location; 5) Hex ID (the unique identifier); 6) Barcode; and 7) Product Classification.[5]

Image 1: Metrc Cannabis Plant Tag

Source: Metrc

Metrc's RFID plant tags are not reusable nor recyclable. However, the DCC announced in October 2022 that the DCC and Metrc would begin testing more sustainable tag prototypes.[6]

The DCC reports that in 2022, it issued 43 million plant tags to cultivator and microbusiness licensees at the expense of $15 million dollars. Each plant tag costs $0.358, and expense that is passed on to licensees by way of the DCC's licensing fees.

Existing law requires a unique identifier to be attached at the base of each plant *or as otherwise required by law or regulation.* It is unclear whether this language authorizes the Legislature or DCC to require the unique identifier to be attached elsewhere on the plant or provided in some other manner entirely. This bill would delete from statute the requirement that the unique identifier be attached at the base of each plant or as otherwise required by law or regulation and instead require the unique identifier to be recorded in a manner as determined by the DCC via the regulatory process.

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[4] Taylor, M. (2022, November 29). *What are credit card surcharges and where are they legal?*. Fortune Recommends. https://fortune.com/recommends/credit-cards/what-are-credit-card-surcharges/

[5] *Statewide Monitoring System Information*. Metrc. (n.d.). https://www.metrc.com/wp-content/uploads/2023/01/anatomy-of-a-tag.pdf

[6] Department of Cannabis Control. (2022, October 10). *Cannabis licensee listening sessions provide framework for "track and trace" improvements*. Department of Cannabis Control. https://cannabis.ca.gov/2022/10/cannabis-licensee-listening-sessions-provide-framework-for-track-and-trace-improvements/

The author and supporters of this bill contend that the existing requirement to affix a plastic tag containing a unique identifier is duplicative (because each plant is assigned a digital unique identifier that corresponds with the physical tag), wasteful, costly, labor intense, and is not serving its intended purpose, which is to help deter diversion of legal cannabis to the illicit market. Although the plastic tag make it easy to identify specific plants, the author's office points out that nothing prevents diversion by skimming off the top of plants or during harvest when the physical tags are removed.

Prior Related Legislation.

AB 2555 (Cooley) of 2018 would have allowed a unique identifier to be used to reference a lot of immature plants, as defined, and required mature plants to be referenced by their own unique identifiers. *AB 2555 died on the Senate Inactive File.*

ARGUMENTS IN SUPPORT:

CannaCraft, the sponsor of this bill, and *March & Ash* collectively write in support:

> Single-use plant tags do nothing to prevent diversion. In addition to the plastic plant tag, each cannabis plant is also assigned a digital plant tag in the track and trace system. Digital plant tagging is currently used by traditional farmers and has been recognized as an effective method by the California Farm Bureau as well as the U.S. Department of Agriculture, in providing the same level of transparency and reported data on the number of plants in the ground at any given time, as plastic ones. Requiring both a digital and plastic plant tag is unnecessary and does nothing to enhance the integrity of the state's track and trace program. In fact, if a cannabis cultivator wished to divert cultivated cannabis into the illegal market, it would most likely occur at the time of harvest, at which point the single use plants tags have already been removed, and discarded. Harvested plants are then combined and assigned a batch tag in track and trace, making the original plastic plant tag obsolete […] Single-use plant tags generate millions of pounds of plastic waste and unnecessary labor and operational costs for licensed cultivators. According to data provided by the Department of Cannabis Control, 43 million plant tags were issued to licensed cultivators and microbusinesses in 2022 for a total cost to the state of $15 million. This does not include the millions of pounds of ancillary plastic waste from the plant tagging process including zip ties, the packaging the tags and zip ties are shipped in, and the garbage bags used for disposing them. By eliminating the individual plastic plant tag requirement, while maintaining digital plant tags, [this bill] preserves the integrity of the track and trace system and eliminates an estimated quarter million pounds of single use plastic waste from landfills each year.

Origins Council, the *Humboldt County Growers Alliance*, the *Big Sur Farmers Association*, the *Nevada County Cannabis Alliance*, the *Mendocino Cannabis Alliance*, and the *Trinity County Agricultural Alliance* collectively write in support:

> Existing law establishes a track-and-trace system intended to track the movement of cannabis throughout the licensed supply chain and prevent diversion to the unlicensed market. Within this track-and-trace framework, the existing requirement to attach a physical tag to each plant is among the most time and labor-intensive requirements in

California state cannabis law, establishing considerable costs on licensed cultivators who are participating within the regulated market.

At the same time, this requirement provides no corresponding regulatory benefit to the state. Following harvest, state regulations require harvested material from individual plants to be combined into a single harvest "batch," which receives its own collective tag, and individual plant tags are discarded. Additionally, each cannabis plant is digitally tagged within the track-and-trace system, and can be identified regardless of whether a corresponding physical tag is attached to each plant.

[…]

[R]equirements to tag every plant impose substantial costs that divert time and resources from meaningful business and compliance tasks. For a half-acre farm, we estimate it typically requires a crew of five people 3-4 days to tag all plants within a licensed cultivation area. These requirements also generate significant environmental impact: we estimate that a single 10,000 square foot cultivator utilizing light deprivation generates about 30 pounds of plastic tag waste per year.

The existing requirement to physically tag each cannabis plant is wasteful, redundant, and imposes unnecessary costs on both the state and licensed cannabis operators.

ARGUMENTS IN OPPOSITION:

The *Coalition de Buena Salud y Bienestar* writes in opposition to this bill:

We oppose [this bill] because it will have a detrimental impact on low income-communities where people often are challenged by violence, food insecurity, poverty, and other socioeconomic barriers such as high unemployment. Illegal cannabis products, at times laced with Fentanyl, are being sold in our communities that cause death.

[…]

We oppose [this bill] because we strongly believe that these proposed regulations violate Proposition 64 as it contradicts its Purpose and Intent which goes against the will of the voters to reduce the illicit market and protect communities. The State of California must maintain the unique and individualized identification of legal cannabis to ensure that they are not diverted into the illicit market. Before the State of California deregulates cannabis, it must start enforcing its own laws to protect our communities.

Los Amigos de la Communidad writes in opposition to this bill:

[This bill] deregulates cannabis which will only exacerbate the problems faced by the immigrant community. For these communities, cannabis related convictions can result in disproportionate and devastating consequences. Almost all cannabis offenses cause mandatory imprisonment in an immigration detention center and they are consistently among the top ten types of convictions for those who are deported. It is well documented and known nationally that the California cannabis illicit market is out of control.

[…]

California must ensure that there are strong regulations in place to shrink the illicit market in order to protect our immigrant communities from being deported or barred from adjusting their immigration status. A strong regulatory program, including the individual identification of legal plants, and proper enforcement against illicit operators will help to keep our immigrant communities safe.

REGISTERED SUPPORT:

CannaCraft, Inc. *(Sponsor)*
Big Sur Farmers Association
California Cannabis Industry Association
California NORML
California Product Stewardship Council
Environmental Working Group
Ethical Data Alliance
Humboldt County Growers Alliance
Kiva Confections
Lompoc Valley Cannabis Association, Santa Barbara County
Mendocino Cannabis Alliance
National Stewardship Action Council
Nevada County Cannabis Alliance
Origins Council
The Parent Company
San Diego & Imperial Counties Cannabis Industry Labor Management
Trinity County Agriculture Alliance
Upstream

REGISTERED OPPOSITION:

Coalition de Buena Salud y Bienestar
First Day Foundation
Los Amigos de la Comunidad, Inc.

Analysis Prepared by: Kaitlin Curry / B. & P. / (916) 319-3301

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 667 (Dodd) – As Amended May 24, 2023

SENATE VOTE: 40-0

SUBJECT: Healing arts: pregnancy and childbirth

SUMMARY: Makes various clarifications and changes to the practice and supervision of certified nurse-midwives (CNMs).

EXISTING LAW:

1) Regulates and licenses the practice of nursing under the Nursing Practice Act, which is administered and enforced by the Board of Registered Nursing (BRN). (Business and Professions Code (BPC) §§ 2700-2838.4)

2) Establishes the following related to nursing scope of practice:

    a) Defines "the practice of nursing" as those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the relevant treatment, and that require a substantial amount of scientific knowledge or technical skill, including all of the following:

        i) Direct and indirect patient care services that ensure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures. (BPC § 2725(b)(1))

        ii) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined. (BPC § 2725(b)(2))

        iii) The performance of skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries. (BPC § 2725(b)(3))

        iv) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures. (BPC § 2725(b)(4))

    b) Defines "standardized procedures" as either of the following:

i) Policies and protocols developed by a licensed health facility through collaboration among administrators and health professionals including physicians and nurses. (BPC § 2725(c)(1))

ii) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a licensed health facility, subject to any guidelines for standardized procedures established by the Medical Board of California and the BRN. (BPC § 2725(c)(2))

c) Establishes standardized procedure guidelines jointly promulgated by the Medical Board of California and the BRN. (California Code of Regulations (CCR), Title 16, § 1474)

d) Requires standardized procedures to include a written description of the method used during development and approval. (CCR, tit. 16, § 1474(a))

e) Specifies the required form and content of standardized procedures, including that they be in writing and signed, specify the authorized functions, establish procedure protocols, detail education and training requirements, provide for evaluation and of authorized nurses, provide for the maintenance of records of authorized nurses, establish the scope of physician supervision, set forth circumstances requiring physician consultation, state limitations on settings, specify patient record keeping requirements, and provide for periodic review of the standardized procedures. (CCR, tit. 16, § 1474(b))

3) Requires the BRN to issue a certificate to practice nurse-midwifery to anyone who meets the statutory requirements for CNMs and meets the BRN's educational standards. (BPC §§ 2746, 2746.1, 2746.2(a))

4) Establishes the following related to CNM scope of practice:

a) Authorizes a CNM to attend cases of low-risk pregnancy and childbirth and to provide prenatal, intrapartum, and postpartum care, including interconception care, family planning care, and immediate care for the newborn, consistent with the Core Competencies for Basic Midwifery Practice adopted by the American College of Nurse-Midwives, or its successor national professional organization, as approved by the BRN. (BPC § 2746.5(a))

b) Defines "low-risk pregnancy" as a pregnancy in which all of the following conditions are met:

i) There is a single fetus. (BPC § 2746.5(a)(1))

ii) There is a cephalic presentation at onset of labor. (BPC § 2746.5(a)(2))

iii) The gestational age of the fetus is greater than or equal to 37 weeks and zero days and less than or equal to 42 weeks and zero days at the time of delivery. (BPC § 2746.5(a)(3))

iv) Labor is spontaneous or induced. (BPC § 2746.5(a)(4))

v) The patient has no preexisting disease or condition, whether arising out of the pregnancy or otherwise, that adversely affects the pregnancy and that the CNM is not qualified to independently address. (BPC § 2746.5(a)(5))

c) Authorizes a CNM to provide specified services in cases of non-low-risk pregnancy and childbirth under mutually agreed-upon policies and protocols that delineate the parameters for consultation, collaboration, referral, and transfer of a patient's care, signed by both the CNM and a physician and surgeon and specifies various conditions and requirements when providing those services. (BPC §§ 2746.5(b)-(c))

d) Authorizes a CNM to order, furnish, and dispense drugs or devices incidental to the provision of care and services for low-risk pregnancy and childbirth and specifies the conditions under which standardized procedures are required. (BPC §§ 2746.51, 4170)

5) Defines "CLIA" as the federal Clinical Laboratory Improvement Amendments of 1988 and the relevant regulations adopted by the federal Health Care Financing Administration that are also adopted by the California Department of Public Health (CDPH). (BPC § 1202.5(a))

6) Regulates clinical laboratories and the performance of clinical laboratory tests through the licensing of clinical laboratories and laboratory directors, scientists, and other laboratory personnel under the CDPH and CLIA. (BPC §§ 1200-1327)

7) Requires every clinical laboratory to have a laboratory director who is responsible for the overall operation and administration of the clinical laboratory, including (1) administering the technical and scientific operation of a clinical laboratory, the selection and supervision of procedures, the reporting of results, and active participation in its operations to the extent necessary to ensure compliance with state clinical laboratory laws and CLIA, (2) the proper performance of all laboratory work of all subordinates, and (3) employing a sufficient number of laboratory personnel with the appropriate education and either experience or training to provide appropriate consultation, properly supervise and accurately perform tests, and report test results in accordance with the personnel qualifications, duties, and responsibilities described in CLIA and state clinical laboratory laws. (BPC § 1209(d)(1))

8) Defines "laboratory director," for purposes of a clinical laboratory test or examination classified as waived, as any of the following:

a) A duly licensed clinical laboratory scientist. (BPC § 1209(a)(2)(A))

b) A duly licensed limited clinical laboratory scientist. (BPC § 1209(a)(2)(B))

c) A duly licensed naturopathic doctor. (BPC § 1209(a)(2)(C))

d) A duly licensed optometrist serving as the director of a laboratory that only performs specified clinical laboratory tests. (BPC § 1209(a)(2)(D))

e) A duly licensed dentist serving as the director of a laboratory that performs only clinical laboratory tests authorized within the scope of practice of dentistry. (BPC § 1209(a)(2)(E))

f) A pharmacist-in-charge of a pharmacy serving as the director of a laboratory that only performs waived tests. (BPC § 1209(a)(2)(F))

9) Authorizes a licensed nurse to perform clinical laboratory tests classified as waived or of moderate complexity. (BPC § 1206.5)

10) Authorizes a CNM, nurse practitioner, or physician assistant to perform clinical laboratory examinations classified as provider-performed microscopy procedures (PPMP) under CLIA to be personally performed using a brightfield or phase/contrast microscope under physician supervision or protocols using the microscope during the patient's visit on a specimen obtained from their own patient or from the patient of a clinic, group medical practice, or other health care provider of which the CNM, licensed nurse practitioner, or licensed physician assistant is an employee. (BPC § 1206.5(d)(3))

11) Defines "prescriber," for purposes of the pharmacy law, to mean a person, who holds a physician's and surgeon's certificate, a license to practice optometry, a license to practice naturopathic medicine, a license to practice dentistry, a license to practice veterinary medicine, a certificate to practice podiatry, or a certificate to practice as a nurse practitioner without standardized procedures, and who is duly registered by the Medical Board of California, the Osteopathic Medical Board of California, the California State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Veterinary Medical Board, the Podiatric Medical Board of California, or the Board of Registered Nursing. (BPC § 4170(c))

12) Defines "practitioner," for purposes of establishing medical eligibility for unemployment insurance, to include a midwife or CNM in cases of normal pregnancy or childbirth. (Unemployment Insurance Code § 2708(e)(2)(A))

THIS BILL:

1) Expands the definition of "laboratory director" to include CNMs for purposes of a clinical laboratory test or examination classified as waived or PPMP under CLIA.

2) Expends the scope of practice for CNMs to include common gynecologic conditions.

3) Clarifies that CNMs practicing under mutually agreed-upon policies and protocols with a physician and surgeon are not required to practice with a physician and surgeon.

4) Authorizes CNMs to furnish or order Schedule II or III controlled substances under mutually agreed-upon policies and protocols with a physician and surgeon rather than patient-specific protocols approved by a physician and surgeon or standardized procedures.

5) Authorizes CNMs to dispense drugs under mutually agreed-upon policies and protocols with a physician and surgeon rather than standardized procedures.

6) Includes CNMs in the definition of "prescriber" under the Pharmacy Law.

7) Expands the definition of "practitioner" for purposes of whether a CNM or licensed midwife may establish medical eligibility for disability benefits from "normal pregnancy or

childbirth" to "pregnancy, childbirth, or postpartum conditions consistent with the scope of their professional licensure."

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, no significant state costs anticipated.

COMMENTS:

Purpose. This bill is co-sponsored by the *California Nurse-Midwifes Association* and *Black Women for Wellness Action Project*. According to the author, this bill "builds upon the recent efforts by the legislature to expand access to women's health care across the state by removing barriers and ensuring [CNMs] can practice to the full extent of their scope and training. [This] bill removes and streamlines redundant requirements and creates consistency for CNMs regardless of practice setting. There is a direct link between race, access, and maternity outcomes in minority communities. Improving access to nurse-midwifery care has been named by leading organizations, such as the March of Dimes and the World Health Organization, as one of the most innovative strategies in addressing racial disparities in communities of color. In the face of these persistent disparities in maternity care and ongoing provider shortages, [this bill] improves access to care for birthing people by ensuring CNMs can truly practice with full independence within their low-risk scope no matter the care setting and preserves the ability to collaborate with physicians to provide care to patients with more complex needs."

Background. CNMs are licensed registered nurses (RNs) with additional training in the field of obstetrics and certification by the American Midwifery Certification Board or an equivalent program. As a result of their additional training, they are considered advanced practice RNs.

As a result of that training, CNMs are also specifically authorized to perform midwifery services and attend cases of low-risk pregnancies and childbirth. CNMs provide midwifery and nursing services in many settings, including the home, birth centers, clinics, and hospitals.

Midwifery. Midwifery is a healthcare profession dealing with maternal care, similar to obstetrics. According to the World Health Organization, midwifery includes the care of a person during pregnancy, labor, and the postpartum/postnatal period, including care of the newborn. Midwifery providers aim to prevent health problems in pregnancy, detect abnormal conditions, seek medical assistance when necessary, and provide emergency services when medical help is unavailable.

On its own, midwifery care is not technically the practice of medicine. While pregnancy may create additional physical and emotional stress, it is not an illness or ailment requiring medical treatment under normal circumstances. Instead, CNMs monitor for abnormal conditions and provide preventive care. A pregnancy without abnormal conditions is called a "low-risk" pregnancy, and CNMs are authorized to independently provide all services and care incidental to a low-risk pregnancy.

CNMs are also authorized to provide services in cases of "high-risk" pregnancies but must do so under mutually agreed-upon policies and procedures with a physician. According to the National Institutes of Health (NIH), "high-risk pregnancy refers to anything that puts the mother or fetus at increased risk for poor health during pregnancy or childbirth. A pregnancy is considered high risk if the mother has chronic health conditions such as high blood pressure or diabetes, or if she

weighs too much or too little. Any pregnancy where complications are more likely than normal is considered a high-risk pregnancy." The mutually agreed-upon policies and protocols ensure that medical care can be provided if abnormal conditions or emergencies arise.

This bill would clarify that a CNM does not have to be in the same practice as a physician to establish mutually agreed-upon policies and protocols. This bill would also clarify that hospitals are allowed to grant admitting and discharge privileges to CNMs.

Furnishing or Ordering Drugs and Devices. Existing law authorizes CNMs to provide drugs and devices to patients as part of their midwifery care, but requires them to establish written standardized procedures with a physician or health system for certain drugs, even if they have mutually agreed-upon policies and procedures developed with and signed by a physician. This bill would delete the requirement for separate standardized procedures and allow for the furnishing of those drugs under mutually agreed-upon policies and protocols. It would also add CNMs to the definition of "prescriber" for purposes of the Pharmacy Law.

CLIA. Existing law generally limits the use of laboratory testing because the tests are used in the diagnostic process. The purpose of CLIA and the California requirements is to minimize the risk of incorrect or unreliable results, patient harm during testing, and improper diagnoses, among other things.

At both the federal and state level, a facility that performs laboratory tests on human specimens for diagnostic or assessment purposes must be certified under CLIA. While CLIA establishes the minimum standards under federal law, it allows states to establish more stringent requirements.

The requirements for CLIA certification vary depending on the complexity of the laboratory tests performed. Clinical laboratories or other testing sites need to know whether each test system used is waived, moderate, or high complexity. In general, the more complicated the test, the more stringent the requirements, including increased training and licensing of laboratory personnel. At a minimum, all laboratories must have a licensed clinical laboratory director.

The FDA determines the complexity of laboratory tests under CLIA. Waived tests are simple tests with a low risk of incorrect results. They include tests listed in the CLIA regulations, tests cleared by the FDA for home use, and tests approved for a waiver by the FDA using the CLIA criteria. Tests not classified as waived are assigned a moderate or high complexity category based on seven criteria given in the CLIA regulations, including ease of use, the knowledge required, and the types of materials tested. For commercially available FDA-cleared or approved tests, the test complexity is determined by the FDA during the pre-market approval process.

CNMs are currently authorized to perform provider-performed microscopy procedures (PPMP) under standardized procedures, as well as waived and moderate complexity tests under the overall operation and administration of the laboratory director, who is typically a physician or clinical laboratory scientist.

This bill would authorize CNMs to act as the laboratory director for purposes of independent midwifery care for waived and PPMP only. According to the sponsors, the waived tests performed by CNMs at birth centers include:

- Pregnancy tests.
- Hemoglobin by fingerstick.
- Urinalysis dipstick for ketones, nitrites, leukocytes, and nitrites.
- Glucose by finger stick.
- Fecal occult blood.
- Ovulation tests.

PPMP includes four simple tests:

1) The Fern Tes, which involves looking at vaginal secretions under the microscope to diagnose that the water bag has broken.
2) Looking at a "wet mount" (slide) of vaginal secretions under the microscope to diagnose a common vaginitis called bacterial vaginosis.
3) Looking at a wet mount of vaginal secretions to diagnose a yeast infection.
4) Looking at a wet mount of vaginal secretions to diagnose a sexually transmitted infection called trichomoniasis.

Medical Eligibility for Disability. Existing law authorizes CNMs to establish medical eligibility for disability in cases of “normal” pregnancy or childbirth. This bill would update the law to reflect the scope of practice of CNMs.

Prior Related Legislation. SB 1237 (Dodd), Chapter 88, Statutes of 2020, authorized CNMs to attend to low-risk pregnancies and perform related incidental functions without physician supervision; replaces the supervision requirement for higher-risk pregnancies with mutually agreed-upon policies and protocols; required the Board of Registered Nursing to establish a Nurse-Midwifery Advisory Committee; established a disclosure and informed consent requirement; and established reporting and data collection requirements.

AB 2682 (Burke) of 2018 would have authorized a CNM to attend cases of normal pregnancy and childbirth without the supervision of a physician and surgeon, required BRN to establish a nurse-midwifery practice committee, and made conforming changes to childbirth attendance requirements for naturopathic doctors. AB 2682 died pending a hearing in the Senate Business, Professions and Economic Development Committee.

SB 457 (Bates) of 2017 would have revised the requirements for physicians and surgeons, LMs, and CNMs who attend cases of pregnancy and out-of-hospital childbirth, including specifying risk factors, referral requirements, and settings. SB 457 died pending hearing in the Senate Business, Professions and Economic Development Committee.

AB 1612 (Burke) of 2017 would have: authorized a CNM to furnish and order drugs and devices related to care rendered in a home under standardized procedures and protocols; authorized a CNM to directly procure supplies and devices, to obtain and administer drugs and diagnostic tests, to order laboratory and diagnostic testing, and to receive reports that are necessary to their practice and consistent with nurse-midwifery education preparation; authorized a CNM to

perform and repair episiotomies and to repair first-degree and second degree lacerations of the perineum, in a licensed acute care center, as specified, in a home setting and in a birth center accredited by a national accrediting body approved by the BRN; required a CNM when performing those procedures, to ensure that all complications are referred to a physician and surgeon immediately. AB 1612 died pending a hearing in the Assembly Appropriations Committee.

AB 1306 (Burke) of 2016 would have removed specified physician and surgeon supervision requirements for CNMs, increased educational requirements, modified practice parameters, established a Nurse-Midwifery Advisory Committee within the Board of Registered Nursing BRN, and subjected CNMs to the ban on the corporate practice of medicine, as specified, among other changes. AB 1306 failed on concurrence on the Assembly floor.

ARGUMENTS IN SUPPORT:

The *California Nurse-Midwives Association (CNMA)* and *Black women for Wellness Action Project* (co-sponsors) write in support, "This bill builds upon recent expansions to maternity care by Certified Nurse Midwives (CNMs) who can now practice fully independently for "normal," low-risk pregnancies and can also collaborate with physicians to provide care to patients with more complex medical needs. One piece of the solution is to allow these highly qualified providers to practice to the full extent of their scope as the original law establishing independent practice intended. The bill addresses redundancies and red tape revealed only through the everyday practice by midwives who experienced disruptive and unnecessary limitations to practice that SB 1237 (Dodd, Chaptered, 2020) intended to address…. For example, low-risk pregnant patients often need temporary disability certification for common pregnancy conditions that require them to take time off work, such as the RN in an Emergency Department whose back pain at 34 weeks keeps her from lifting patients, or a kindergarten teacher who has significant nausea and vomiting in the initial weeks of pregnancy. While these are typical conditions of pregnancy, the CNM cannot currently certify temporary disability for them. This unnecessary requirement disrupts and delays patient care, especially in health provider shortage areas, and burdens physicians with these approvals that otherwise fall within the scope and training of CNMs."

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

California Nurse Midwives Association (co-sponsor)
Black Women for Wellness Action Project (co-sponsor)
2020 Mom
American Association of Birth Centers
American Association of University Women California
American Nurses Association/California
Best Start Birth Center
California Association for Nurse Practitioners

California Association of Nurse Anesthetists
Citizens for Choice
Maternal and Child Health Access
NARAL Pro-choice California
National Health Law Program
Purchaser Business Group on Health
San Francisco Black, Jewish and Unity Group
Training in Early Abortion for Comprehensive Health Care
Women's Foundation California
Women's Health Specialists
REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 833 (McGuire) – As Amended June 22, 2023

SENATE VOTE: 37-1

SUBJECT: Cannabis licensing: cultivation licenses: changing license type: inactive status.

SUMMARY: Requires the Department of Cannabis Control (DCC), no later than March 1, 2024, to begin allowing cultivators to select a smaller license type or place their license in inactive status, as specified.

EXISTING LAW:

1) Regulates the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and establishes the Department of Cannabis Control (DCC) to administer and enforce the act. (Business and Professions Code (BPC) §§ 26000-26260)

2) Prohibits a person or entity from engaging in commercial cannabis activity without a state license issued by the DCC. (BPC § 26037.5)

3) Declares that cannabis is an agricultural product, requires the DCC to consider issues including water use and environmental impacts when issuing cannabis cultivation licenses, and prohibits the DCC from issuing new licenses or increasing the total number of plant identifiers within a watershed or geographic area if the State Water Resources Control Board or the Department of Fish and Wildlife finds that cannabis cultivation is causing significant adverse impacts in that watershed or area. (BPC § 26060)

4) Establishes 20 types of cannabis licenses, including subtypes, for cultivation, manufacturing, testing, retail, distribution, and microbusiness and requires each licensee except for testing laboratories to designate whether their license is for adult-use or medicinal cannabis. (BPC § 26050)

5) Defines "cultivation" to mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. (BPC §26001(m))

6) Defines "cultivation site" to mean a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed or a location where any combination of those activities occurs. (BPC § 26001(n))

7) Designates 14 different cultivator license types depending on the size, setting, and lighting of the cultivation site. (BPC § 26061)

8) Requires the DCC to establish a scale of application, licensing, and renewal fees, based upon the cost of administering and enforcing MAUCRSA. (BPC § 26180)

THIS BILL:

1) Requires the DCC, no later than March 1, 2024, to begin allowing cultivation licensees to change the size of a cultivation license or to place a cultivation license in inactive status.

2) Requires the DCC to allow a licensee to change the size of a cultivation license as follows:

    a) Allow a licensee, at the time of license renewal, to change an existing cultivation license to a cultivation license type with a smaller maximum canopy size.

    b) Allow a licensee, at the time of each subsequent license renewal, to do any of the following:

        i) Restore the licensee's original cultivation license type.

        ii) Maintain the smaller cultivation license type selected.

        iii) Change to a different cultivation license type with a maximum canopy size smaller than the licensee's original cultivation license type, which may be larger or smaller than the smaller cultivation license selected.

    c) Allow a provisional license holder to do either of the following:

        i) Continue to pursue the requirements for annual licensure in connection with the licensee's original cultivation license type.

        ii) Pursue the requirements for annual licensure in connection with a smaller cultivation license type selected.

3) Clarifies that this bill does not require the DCC to allow changes to nursery licenses or the classification of a cultivation license as indoor, outdoor, or mixed-light.

4) Requires the DCC to allow a licensee to place a cultivation license in inactive status at the time of license renewal as follows:

    a) Prohibit an inactive license holder from engaging in the cultivation of cannabis, except they may:

        i) Engage in the drying, curing, grading, trimming, packaging, and sale of cannabis harvested before the date the license was placed in inactive status.

        ii) Possess and maintain seeds and immature plants used solely for propagation, to preserve the genetic lineage of the licensee's cannabis plants.

    b) Specify that an inactive license is inactive until the license is next renewed. At that next renewal, and each renewal thereafter, the license may be placed in either active or inactive status, at the election of the licensee.

c) Require a licensee who holds a license in inactive status to pay a reduced license fee, as determined by the DCC.

d) Specify that a license in inactive status is still a license and specify that an inactive license holder:

i) Must continue to comply with all laws and regulations applicable to cultivation licensees.

ii) Must, if the licensee holds a provisional license, continue to pursue requirements for annual licensure.

iii) Is allowed to maintain eligibility for state programs available to cultivation licensees, including, but not limited to, grant programs.

5) Requires the DCC to allow licensees a one-time opportunity to change the date of license renewal.

6) Authorizes the DCC to adopt emergency regulations to implement this bill, specifies that the DCC's existing regulatory provisions apply to emergency regulations adopted or readopted under this bill, and deems the adoption of emergency regulations authorized by this bill an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare.

7) Specifies that the Legislature finds and declares that this bill furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.

FISCAL EFFECT: According to the Senate Appropriations Committee, the DCC estimates one-time costs of $200,000 to update IT systems to collect and process applications, reactive licenses, and apply credits for fallowing durations and fee reductions (Cannabis Control Fund).

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "Many cannabis cultivators have been heavily affected by market volatility, drought, and fire issues over the past several years. These small growers across the golden state have faced hard choices between either abandoning their state licenses, or paying a full state licensing fee for cultivation area not under production. Cannabis cultivators must either renew their state license each year, costing tens of thousands of dollars in fees, or they need to forfeit their license and reapply and start the arduous licensing process all over again. [This bill] would enable cultivators to voluntarily reduce or pause their cultivation while paying a reduced licensing fee that corresponds to their reduced cultivation area."

Background. The Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), which incorporates prior cannabis laws, authorizes a person who obtains a state license under MAUCRSA to engage in commercial adult-use cannabis activity under that license and applicable local laws.

The Department of Cannabis Control (DCC) is the state agency that licenses and regulates cannabis businesses. DCC regulates:

- Cultivation of cannabis plants.
- Transportation and tracking of cannabis.
- Manufacturing and labeling of cannabis.
- Testing of cannabis.
- Sale of cannabis.
- Holding events where cannabis is sold or used.

Cultivation. The growing of cannabis is known as cultivation and requires a cultivation license. DCC issues 14 different types of cultivation licenses based on the size, setting, and lighting:

License type	Application fee	License fee
Specialty cottage outdoor	$135	$1,205
Specialty cottage indoor	$205	$1,830
Specialty cottage mixed-light tier 1	$340	$3,035
Specialty cottage mixed-light tier 2	$580	$5,200
Specialty outdoor	$270	$2,410
Specialty indoor	$2,170	$19,540
Specialty mixed-light tier 1	$655	$5,900
Specialty mixed-light tier 2	$1,125	$10,120
Small outdoor	$535	$4,820
Small indoor	$3,935	$35,410
Small mixed-light tier 1	$1,310	$11,800
Small mixed-light tier 2	$2,250	$20,235
Medium outdoor	$1,555	$13,990
Medium indoor	$8,655	$77,905
Medium mixed-light tier 1	$2,885	$25,970
Medium mixed-light tier 2	$4,945	$44,517
Nursery	$520	$4,685
Processor	$1,040	$9,370

Large cultivation type	Application fee	Base license fee	Fee per additional 2,000 Sq. Ft
Large outdoor	$1,555	$13,990	$640
Large indoor	$8,655	$77,905	$7,080
Large mixed-light tier 1	$2,885	$25,970	$2,360
Large mixed-light tier 2	$4,945	$44,517	$4,040

Fallowing. Fallowing is when land is allowed to lie idle during growing season. There are a variety of reasons to fallow, such as rotating crops, improving soil health, or as a response to drought, wildfires, or market conditions. According to the author, fallowing is not practical for cannabis cultivators because there are only two options: (1) maintain their license and pay the full fee without growing new crops to sell or (2) allow their license to expire and undergo the full application process again. This bill would allow cultivators the option of reducing their license size or placing their license in inactive status, making it easier to fallow.

ARGUMENTS IN SUPPORT:

Origins Council writes in support of the March 22, 2023, version of this bill:

> In other sectors of agriculture, farmers commonly adjust their production in response to market and environmental conditions, cutting back during periods of oversupply and expanding in periods of undersupply. Under current state regulatory procedures, however, fallowing is currently not practical for cannabis cultivators. Current state regulations require cannabis cultivators to either renew their state license each year and pay thousands of dollars in annual licensing fees, or to forfeit their license and reapply from square one at a future date.
>
> The effect of the current regulatory structure is to effectively require farmers to grow their full square footage each year, or permanently forfeit their license – regardless of market or environmental conditions that would otherwise lead cultivators to cut back.
>
> [This bill] would enable cultivators to voluntarily reduce or pause their cultivation while paying a reduced licensing fee that corresponds to their reduced cultivation area, thereby providing cannabis cultivators with the same opportunities available to all other agricultural producers.

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

Big Sur Farmers Association
County of Humboldt
Humboldt County Growers Alliance
Mendocino Cannabis Alliance
Nevada County Cannabis Alliance
Origins Council
Resources Legacy Fund
Trinity County Agriculture Alliance
Trout Unlimited

REGISTERED OPPOSITION:

None on file

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