# California State Assembly

## BUSINESS AND PROFESSIONS

**MARC BERMAN**
CHAIR



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# AGENDA

Tuesday, April 18, 2023
9 a.m. -- 1021 O Street, Room 1100

## BILLS HEARD IN FILE ORDER

| | | | |
|---|---|---|---|
| 1. | AB 351 | Chen | Cannabis: license transfers. |
| 2. | AB 420 | Aguiar-Curry | Cannabis: industrial hemp. |
| 3. | AB 602* | Pellerin | California State Board of Pharmacy: emergency refills: report. |
| 4. | AB 623* | Chen | Cannabis: THC testing variances. |
| 5. | AB 687 | Hart | California Cannabis Authority. |
| 6. | AB 936* | Wood | Dentistry: exemptions. |
| 7. | AB 1207 | Irwin | Cannabis: labeling and advertising. |
| 8. | AB 1244 | Holden | Private security services and private investigators: qualified managers. |
| 9. | AB 1286 | Haney | Pharmacy. |
| 10. | AB 1399 | Friedman | Veterinary medicine: veterinarian-client-patient relationship and veterinary telemedicine. |
| 11. | AB 1565 | Jones-Sawyer | California Cannabis Tax Fund: local equity program grants. |
| 12. | AB 1610* | Jones-Sawyer | Cannabis: Department of Cannabis Control. |

**** Consent***

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 351 (Chen) – As Amended March 23, 2023

**SUBJECT:** Cannabis: license transfers.

**SUMMARY:** Authorizes the Department of Cannabis Control (DCC or department) to transfer, assign, or reassign licenses for commercial cannabis activity.

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

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

5) Expresses that state cannabis laws shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate cannabis businesses. (BPC § 26200(a))

6) Grants the department the sole authority to create, issue, deny, renew, discipline, condition, suspend, or revoke licenses for commercial cannabis activity. (BPC § 26012(a)).

7) Authorizes the department to collect fees in connection with activities it regulates concerning cannabis. The department may create licenses in addition to those identified in this division that the department deems necessary to effectuate its duties under this division. (BPC § 26012(b)).

**THIS BILL:**

1) Authorizes DCC to transfer, assign, or reassign licenses for commercial cannabis activity.

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

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.**

This bill is sponsored by the *California Cannabis Manufacturers Association* and *Kiva Confections*. According to the author:

> [This bill] is a critical step forward in regulation of the legal cannabis industry, keeping consumer safety in the forefront while ensuring the industry operates as efficiently as possible. In this way, the DCC will be explicitly authorized to create a simplified process to transfer and reassign licenses. This bill is another important step to ensure fairness and efficiency in an industry that is still taking shape here in California. Current regulations simply do not reflect optimal conditions for the cannabis industry, it is critical that the Legislature rewards those who play by the rules within the legal cannabis market.

**Background.**

*Department of Cannabis Control.* Since July 1, 2021, DCC has been the single entity responsible for administering and enforcing the majority of California's cannabis laws, collectively known as MAUCRSA. 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]

In order to apply for a license, applicants must complete the local permitting process, including a California Environmental Quality Act (CEQA) review; fill out an application; submit required documents, including diagrams of what would be the licensed premises; be fingerprinted and undergo a background check; and pay an application fee.[2] When applications are approved, applicants must pay a license fee.[3] Licenses are good for one year, but may be renewed.[4]

In Fiscal Year 2021-2022, the average time for processing state license applications, by state license category, was:

- Cultivation Licenses: 221 days
- Manufacturing Licenses: 180 days
- Distribution Licenses: 287 days
- Testing Laboratory Licenses: 851 days
- Retailer Licenses: 183 days Microbusiness Licenses: 244 days
- Event Organizer Licenses: 153 days
- Temporary Cannabis Event Licenses: 59 days[5]

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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] Department of Cannabis Control. (2021, October 22). Annual License Application Checklist.
[3] Department of Cannabis Control. (n.d.). *How to apply for or renew a license*. Department of Cannabis Control. Retrieved April 14, 2023, from https://cannabis.ca.gov/applicants/how-to-apply-renew/
[4] Ibid.
[5] Department of Cannabis Control. (2023, March). Department of Cannabis Control Annual Report 2023.

Under existing law, DCC does not have explicit authorization to transfer, assign, or reassign a state-issued license. Currently, in order to acquire a license, one would have to acquire the entire company that holds the license (e.g., an LLC) and assume all of its liability. Subsequently, the owner of the company being bought would have to add the purchaser to the license. Once approved and added to the license, the purchaser could then offload the seller from the license. The author and sponsor contend that this process is overly burdensome and having the ability to transfer a license would improve continuity of operations.

**Current Related Legislation.**

*AB 471 (Kalra)* would authorize DCC to issue a state caterer license that authorizes the licensee to serve cannabis at a private event approved by a local jurisdiction for the purpose of allowing event attendees to consume the cannabis. *Pending in the Assembly Governmental Organization Committee.*

*AB 1111 (Pellerin)* requires DCC to issue a small producer event sales license, authorizing onsite cannabis sales at state temporary events, to a licensed cultivator who meets specified requirements. *Pending in the Assembly Appropriations Committee.*

**Prior Related Legislation.**

*AB 2844 (Kalra) of 2022* was substantially similar to AB 471 (Kalra) of 2023. *Held in the Assembly Appropriations Committee.*

*AB 2691 (Wood) of 2022* was substantially similar to AB 1111 (Pellerin). *Died on the Assembly Inactive File.*

*AB 2210 (Quirk) Chapter 391, Statutes of 2022,* prohibited DCC from denying an application for a state temporary event license solely on the basis that there is a license issued pursuant to the Alcoholic Beverage Control Act for the proposed premises of the event.

*AB 2312 (Quirk) of 2020* was substantially similar to AB 2210 (Quirk) of 2022. *Died pending a hearing in this committee.*

*AB 2020 (Quirk), Chapter 749, Statutes of 2018,* authorized the Bureau of Cannabis Control to issue a temporary state license to provide on-site sales and consumption of cannabis at a temporary event located at a fairground, district agricultural association event, or at another venue expressly approved by a local jurisdiction.

*AB 2641 (Wood) of 2018* was substantially similar to AB 2691 (Wood) of 2022 and AB 1111 (Pellerin) of 2023. *Held on the Senate Appropriations Committee Suspense File.*

**ARGUMENTS IN SUPPORT:**

In support, the sponsors of this bill, *California Cannabis Manufacturers Association* and *Kiva Confections* write, "This legislation would positively impact the growing legal market and cannabis-friendly culture; there is a growing recognition for the need of transferable licenses; current statute dictates that licenses are not transferable."

The *California Cannabis Industry Association* writes in support:

> Much of a licensed cannabis business' value is tied up in its licenses, and when a business is purchased it can be an unnecessarily cumbersome process to ensure the business is able to continue operations through the transfer of ownership due to a lack of statutory clarity. [This bill] resolves this issue by clearly allowing the DCC to authorize the transfer of licenses for commercial cannabis activity from a licensee to another person, subject to the requirements of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

**ARGUMENTS IN OPPOSITION:**

None on file.

**POLICY ISSUE(S) FOR CONSIDERATION:**

*Marketplace for licenses.* This bill has the potential to create a marketplace for licenses whereby large businesses are able to consolidate the market by outbidding smaller businesses. At a time when market consolidation is occurring rapidly, the author may wish to consider how to narrowly tailor the bill so as to provide expediency for licensees without creating a marketplace that could result in inequitable bidding wars for licenses.

*Enforcement.* The author may wish to consider whether authorizing DCC to transfer licenses could unintentionally allow licensees who have violated the law to skirt disciplinary action by DCC.

**REGISTERED SUPPORT:**

California Cannabis Manufacturers Association (co-sponsor)
Kiva Confections (co-sponsor)
California Cannabis Industry Association

**REGISTERED OPPOSITION:**

None on file.

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

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 420 (Aguiar-Curry) – As Introduced February 2, 2023

**SUBJECT:** Cannabis: industrial hemp.

**SUMMARY:** Allows for cannabis licensees to manufacture, distribute, or sell products that contain industrial hemp, as well as cannabinoids, extracts, or derivatives from industrial hemp.

**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 Department 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) Provides for twenty total types of cannabis licenses including subtypes for cultivation, manufacturing, testing, retail, distribution, and microbusiness; requires each licensee except for testing laboratories to clearly designate whether their license is for adult-use or medicinal cannabis. (BPC § 26050)

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

5) Prohibits the sale of cannabis products that are alcoholic beverages, including an infusion of cannabis or cannabinoids derived from industrial hemp into an alcoholic beverage. (BPC § 26070.2)

6) Required the DCC to prepare a report to the Governor and the Legislature outlining the steps necessary to allow for the incorporation of hemp cannabinoids into the cannabis supply chain on or before July 1, 2022. (BPC § 26013.2)

7) Expresses that state cannabis laws shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate cannabis businesses. (BPC § 26200)

8) Defines "industrial hemp" as a crop that is limited to types of the plant Cannabis sativa L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom. (Health and Safety Code (HSC) § 11018.5(a))

9) Exempts industrial hemp from the regulatory requirements of MAUCRSA. (HSC § 11018.5(b))

10) Establishes a regulatory framework for industrial hemp under the Sherman Food, Drug, and Cosmetic Law (Sherman Law) administered by the California Department of Public Health (CDPH), under which manufacturers of products containing industrial hemp or hemp products are required to obtain a process food registration and comply with good manufacturing practices. (HSC §§ 111920 *et seq.*)

11) Provides the California Department of Food and Agriculture (CDFA) with responsibility for administering and enforcing laws governing the growing, cultivating, and distributing of industrial hemp. (Food and Agricultural Code §§ (FAC) 81000 *et seq.*)

12) Establishes an Industrial Hemp Advisory Board with members appointed by the Secretary of Food and Agriculture to advise the secretary and make recommendations on all matters pertaining to industrial hemp seed law and regulations, enforcement, related annual budgets, and the setting of an appropriate assessment rate necessary for the administration of the law. (FAC § 81001)

13) Allows only approved cultivars to grow industrial hemp. (FAC § 81002)

14) Requires growers of industrial hemp, hemp breeders, and established agricultural research institutions to register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation. (FAC §§ 81003 – 81005)

15) Requires each registered established agricultural research institution, registered grower of industrial hemp, and registered hemp breeder to report on its hemp production in the state and any changes to the location where it will produce hemp to the Farm Service Agency of the United States Department of Agriculture. (FAC § 81004.6)

16) Imposes limitations and prohibitions on the growth of industrial hemp and requires each crop of industrial hemp to be tested by a laboratory to determine the THC levels of a random sampling of its dried flowering tops. (FAC § 81006)

**THIS BILL:**

1) Provides that MAUCRSA does not prohibit a cannabis licensee from manufacturing, distributing, or selling products that contain industrial hemp, or cannabinoids, extracts, or derivatives from industrial hemp, if the product complies with all applicable state laws and regulations.

2) Declares that it is the intent of the Legislature to enhance the viability of cannabis licensees in the marketplace by pursuing measures to relieve tax and regulatory requirements, and to authorize licensees to manufacture, distribute, and sell hemp and cannabidiol (CBD) products in compliance with current law.

**FISCAL EFFECT:** This bill is keyed nonfiscal by the Legislative Counsel.

**COMMENTS:**

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

"While both hemp and marijuana are members of the cannabis family, they are uniquely distinctive plants. Hemp-derived CBD is not intoxicating because CBD derived from hemp contains only trace amounts of THC (less than 0.3 percent), the psychoactive component in marijuana products. Consumers seek out hemp-derived CBD because it can provide them with relief from pain, inflammation, anxiety, insomnia, and other conditions. Many people have been purchasing hemp-derived CBD topical products at their local natural foods shops, fitness centers, and health stores for some time. In fact, seniors are a significant portion of the people choosing to use hemp CBD, because they do not want to visit a marijuana dispensary. Further, hemp has become an increasingly important crop. It is easy to grow, can be cultivated without toxic pesticides, and serves well as a rotation crop. This is an opportunity for California to make it easier for its citizens to access a non-intoxicating-alternative product they want, and for farmers to establish themselves in a fast-growing industry."

**Background.**

*Cannabis versus Hemp.* Scientifically speaking, both industrial hemp and what has commonly been referred to as marijuana are members of the same plant species, *Cannabis sativa*. Under California law, the term "cannabis" typically refers to varieties of the species that contain sufficient levels of the cannabinoid tetrahydrocannabinol (THC) to produce a psychoactive effect, or "high"; this plant and its associated products are regulated by the DCC under MAUCRSA. Hemp, meanwhile, is commonly regarded more as an agricultural plant and has historically been used for products such as paper, textiles, cosmetics, and fabric. By definition, industrial hemp contains less than 0.3% THC, which is considered trace amounts compared to psychoactive cannabis (15-40% THC). Hemp is regulated by the CDFA for agricultural purposes and by the CDPH when it is used in food, beverage, and cosmetic products.

While industrial hemp does not share the same psychoactive properties as cannabis due to its significantly lower amount of THC, both hemp and cannabis contain another cannabinoid known as cannabidiol (CBD). According to the National Institute of Health, CBD has pain relieving, anti-inflammatory, anti-psychotic, and tumor-inhibiting properties. Two products, dronabinol and nabilone, are FDA-approved drugs used for the prevention or treatment of chemotherapy-related nausea and vomiting. There are currently over 100 clinical trials of CBD listed on the National Library of Medicine's website. These trials are testing CBD's utility in treating epilepsy, substance use disorders, pain, psychosis, and anxiety, among other disorders and conditions.

*Regulation of Cannabis.* 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 California Department of Public Health—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.

*Regulation of Hemp.* SB 566 (Leno, Chapter 398, Statutes of 2013) established the Industrial Hemp Farming Act, which provided a regulatory scheme for the cultivation and processing of industrial hemp that would go into effect upon approval by the federal government. SB 566 required growers of industrial hemp for commercial purposes to register with the county agricultural commissioner of the county in which the grower intends to engage in industrial hemp cultivation among various provisions. Established agricultural research institution were exempted from these requirements.

The U.S. Agriculture Improvement Act of 2018 (known as the Farm Bill) federally legalized the growing, cultivating, and the transporting of industrial hemp between states. However, the Farm Bill resulted in CBD containing products that have been approved by the FDA to be removed from the list of Schedule I substances under the CSA and reclassified as a Schedule V drug. This policy was enacted because of the findings that it does not contain any psychoactive or addictive properties and has a very low abuse potential. This separates industrial hemp from marijuana specific cannabis products, which remains a Schedule I drug on the federal level. The Farm Bill also classifies CBD as a food product.

Importantly, the Farm Bill also requires states to devise their own sale restrictions and regulations, of which the U.S. Department of Agriculture (USDA) is responsible for overseeing. SB 153 (Wilk, Chapter 838, Statutes of 2019) revised provisions in SB 566 regulating the cultivation and testing of industrial hemp to conform to the requirements for a state plan under the 2018 Farm Bill. SB 292 (Wilk, Chapter 485, Statutes of 2021) additionally conformed state law to the USDA Interim Final Rule regarding reporting and testing of industrial hemp in the United States.

In 2021, AB 45 (Aguiar-Curry, Chapter 576, Statutes of 2021) was enacted to significantly expand and clarify the framework under which CBD derived from industrial hemp can be used in food, beverages and dietary supplements. The bill revised or added various definitions relating to hemp products and placed new requirements on hemp manufacturers in exchange for more explicit authority to produce manufactured goods containing CBD derived from hemp. In doing so, the bill expressly specified that foods, beverages, dietary supplements, cosmetics, and pet food are not adulterated by the inclusion of industrial hemp cannabinoids.

*Integration of Cannabis and Hemp.* Notwithstanding the biological and chemical similarities of cannabis and hemp, hemp products are widely considered "non-cannabis goods" for purpose of MAUCRSA. Under § 15407 of the DCC's regulations, licensed cannabis retailers are prohibited from selling any non-cannabis goods besides cannabis accessories and branded merchandise. (Proposed regulations recently announced by the DCC would further allow for the sale of prepackaged non-cannabis infused and food and beverages, subject to local authorization.) While presumably an individual or entity could both engage in a licensed cannabis business and in a business involving hemp, it is understood that the two supply chains must remain fully distinct.

Whether hemp and cannabis products should be allowed to coexist in a regulatory context has been debated consistently over the past several years. Because both plants contain the same cannabinoids, it is often the case that two essentially identical products—CBD gummies, for example—are regulated and sold differently based on whether the CBD was derived from cannabis or industrial hemp. Many cannabis retailers may wish to also sell products derived from hemp. However, some in the cannabis industry may see hemp as an unwelcomed competitor, and concerns have been expressed that the difference in regulatory systems and consumer safety requirements should keep the two products separated.

AB 45 included language requiring the DCC to prepare a report to the Governor and the Legislature outlining the steps necessary to allow for the incorporation of hemp cannabinoids into the cannabis supply chain. The report is required to include, but is not be limited to, the incorporation of hemp cannabinoids into manufactured cannabis products and the sale of hemp products at cannabis retailers. Language in AB 45 also stated the intent of the Legislature to consider, in light of the DCC's report, "whether and how to take legislative action concerning the incorporation of hemp into the cannabis supply chain."

The DCC published *The Hemp Report: Steps and Considerations for Incorporating Hemp Into the Commercial Cannabis Supply Chain* and submitted it to the Legislature in January, 2023. The report stated that "incorporating hemp into the regulated commercial cannabis supply chain presents both policy and implementation challenges. From the policy perspective, several determinations would need to be made to move forward with the inclusion of hemp." In the report's conclusion, the DCC summarized its determinations as follows:

> "As detailed in this report, the inclusion of hemp into the commercial cannabis supply chain is complex and requires careful consideration of significant policy questions to arrive at an approach that is in the best interests of California. The approach utilized to accomplish this end would directly impact the cannabis industry, hemp industry, standard commercial market, medicinal and adult-use consumers, and the Department and other responsible California state agencies. While this report raises significant policy considerations to inspire and support deliberations between policy makers and stakeholders, it should not be interpreted as containing every single issue that may need to be considered and addressed by policy makers to determine when or if to incorporate hemp into the cannabis supply chain. If California chooses to allow hemp into the commercial cannabis supply chain, irrespective of which approach California adopts, implementation will likely require significant time and resources."

This bill is intended to serve as a vehicle for continuing discussions around how California might integrate industrial hemp into the supply chain for cannabis. Currently, the bill contains a simplistic statement that nothing in MAUCRSA prohibits integration. It is presumed that a much more substantive bill would be necessary to resolve the DCC's concerns and recommendations.

**Current Related Legislation.** AB 374 (Haney) would authorize local jurisdictions to allow cannabis retailers to conduct business activities unrelated to cannabis on their premises. *This bill is pending in the Assembly Committee on Governmental Organization.*

**Prior Related Legislation.** AB 1656 (Aguiar-Curry) from 2022 was substantially similar to this bill. *This bill died on the Senate inactive file.*

AB 45 (Aguiar-Curry, Chapter 576, Statutes of 2021) established a regulatory framework for industrial hemp under the Sherman Food, Drug, and Cosmetic Law.

SB 292 (Wilk, Chapter 485, Statutes of 2021) conformed current state law to the United States Department of Agriculture's Interim Final Rule regarding reporting and testing of industrial hemp.

SB 153 (Wilk, Chapter 838, Statutes of 2019) revised provisions regulating the cultivation and testing of industrial hemp to conform to the requirements for a state plan under the 2018 Farm Bill.

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

SB 566 (Leno, Chapter 398, Statutes of 2013) allowed hemp to be grown in California, upon federal approval, by defining "industrial hemp" to be excluded from the definition of "marijuana," a Schedule I controlled substance.

**ARGUMENTS IN SUPPORT:**

The **California Cannabis Industry Association** (CCIA) supports this bill. According to the CCIA, "California is already lagging behind 17 states that have authorized the use of hemp cannabinoid inputs for licensed operators. Like California, many of those states utilize METRC for track and trace. None of the above states have incurred a substantial issue that has resulted in removing the authorization. In addition, the country's potentially second largest cannabis marketplace – New York - authorizes dual use facilities. It is our expectation that AB 420 can and will be used as a vehicle for an acceptable supply chain integration solution."

**ARGUMENTS IN OPPOSITION:**

None on file.

**REGISTERED SUPPORT:**

California Cannabis Industry Association
California Cannabis Manufacturers Association
Kiva Confections
The Parent Company

**REGISTERED OPPOSITION:**

None on file.

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

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 602 (Pellerin) – As Introduced February 9, 2023

**SUBJECT:** California State Board of Pharmacy: emergency refills: report.

**SUMMARY:** Requires the Board of Pharmacy (BOP) to submit a report to the Legislature relating to refills of prescriptions without the prescriber's authorization and complaints that pharmacists have failed to refill prescriptions under these circumstances, and requires the BOP to take reasonable steps to ensure that all licensed pharmacists in the state are fully aware of their authority to refill a prescription.

**EXISTING LAW:**

1) Establishes the Pharmacy Law. (Business and Professions Code (BPC) §§ 4000 *et seq.*)

2) Establishes the BOP to administer and enforce the Pharmacy Law, comprised of seven pharmacists and six public members. (BPC § 4002)

3) Provides that protection of the public shall be the highest priority for the BOP in exercising its licensing, regulatory, and disciplinary functions. (BPC § 4001.1)

4) Authorizes the Board to adopt rules and regulations as may be necessary for the protection of the public. (BPC § 4005)

5) Defines "dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals and includes any drug or device that by federal or state law can be lawfully dispensed only on prescription. (BPC § 4022)

6) Defines "pharmacist" as a natural person to whom a license has been issued by the BOP which is required for any person to manufacture, compound, furnish, sell, or dispense a dangerous drug or dangerous device, or to dispense or compound a prescription. (BPC § 4036; BPC § 4051)

7) Authorizes a pharmacist to engage in various professional activities as part of their scope of practice. (BPC § 4052)

8) Authorizes a pharmacist to refill a prescription for a dangerous drug or dangerous device without the prescriber's authorization if the prescriber is unavailable to authorize the refill and if, in the pharmacist's professional judgment, failure to refill the prescription might interrupt the patient's ongoing care and have a significant adverse effect on the patient's well-being. (BPC § 4064)

9) Requires every pharmacy to establish a quality assurance program that shall, at a minimum, document medication errors attributable, in whole or in part, to the pharmacy or its personnel. (BPC § 4125)

10) Allows only a physician, dentist, podiatrist, veterinarian, naturopathic doctor, registered nurse, certified nurse-midwife, optometrist, or out-of-state prescriber to write or issue a prescription. (Health and Safety Code (HSC) § 11150)

11) States that a prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice, and that the responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. (HSC § 11153)

**THIS BILL:**

1) Requires the BOP to submit a report to the Legislature on or before February 28, 2025 that contains the following information:

   a) The total number of times a pharmacist refilled a prescription for a dangerous drug or device without the prescriber's authorization.

   b) The total number of complaints submitted by consumers alleging that a pharmacist failed to refill a prescription for a dangerous drug or device, because the prescriber was unavailable to authorize the refill.

   c) The BOP shall make a reasonable effort to determine, of all the complaints submitted, how many resulted from pharmacist's failure to refill a prescription due to a lack of understanding of the full authority vested in the pharmacist by law.

   d) A summary of the board's findings following an investigation of the complaints.

2) Requires the BOP to take reasonable steps to ensure that all licensed pharmacists in the state are fully aware of their authority to refill a prescription.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

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

> "The continuity of prescription drugs can mean life or death for some people. AB 602 will look at the barriers in place for Pharmacists to refill already existing prescriptions, as well as educate pharmacists on their ability to refill prescriptions on an emergency basis. The suicide hotlines have shared that one major reason people call in is when there is a lapse in mental health medications, we must work to ensure that people have timely access to current medications without added barriers."

**Background.**

While dangerous drugs or devices may generally only be dispensed pursuant to a prescription, pharmacists have long had the authority to refill a prescription without the prescriber's authorization. Under current law, a prescription can be refilled by a pharmacist without the prescriber's if, in the pharmacist's professional judgment, failure to refill the prescription might interrupt the patient's ongoing care and have a significant adverse effect on the patient's well-

being. The prescriber must have been unavailable to authorize the refill, and the law requires that the pharmacist make every reasonable effort to contact the prescriber. The pharmacist is additionally required make an appropriate record, including the basis for proceeding with the refill, and both the patient and the prescriber must be informed. The law provides that the prescriber shall not incur any liability as the result of the refilling of the prescription.

The author has expressed concern that while pharmacists are authorized to refill a prescription for dangerous drugs or devices without the prescriber's authorization in certain cases, many are refusing to do so, either out of ignorance of their authority or refusal to act in what could be the best interest of the patient. This bill would enable the Legislature to have more awareness of the scope of this issue by requiring the BOP to submit a report regarding how often the law has been used, as well as complaint data relating to pharmacists' failure to refill a prescription for a dangerous drug or device without prescriber authorization. The BOP is further required to make a reasonable effort to determine, of all the complaints submitted, how many resulted from pharmacist's failure to refill a prescription due to a lack of understanding of the full authority vested in the pharmacist.

Additionally, this bill would require the BOP to take reasonable steps to ensure that all licensed pharmacists in the state are fully aware of their authority to refill a prescription without the prescriber's authorization. This could likely be fulfilled through the use of board newsletters and other licensee communication. Any additional tools for increasing awareness within the pharmacy profession would be informed through recommendations derived from the BOP's report.

**Prior Related Legislation.** AB 2575 (Aguiar-Curry, Chapter 716, Statutes of 2018) authorized a community clinic licensed by the BOP to furnish drugs or devices without a prescription during a state of emergency.

AB 2802 (Granlund, Chapter 890, Statutes of 1996) revised and reorganized the Pharmacy Law, including provisions authorizing the refill of prescriptions without prescriber authorization.

**REGISTERED SUPPORT:**

None on file.

**REGISTERED OPPOSITION:**

None on file.

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

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 623 (Chen) – As Amended March 16, 2023

**SUBJECT:** Cannabis: THC testing variances.

**SUMMARY:** Requires the Department of Cannabis Control (DCC) to establish regulations to adjust testing variances for edible cannabis products that include less than five milligrams of tetrahydrocannabinol (THC) in total.

**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) §§ 26000-26325)

2) Establishes the DCC within the Business, Consumer Services, and Housing Agency for purposes of administering and enforcing MAUCRSA. (BPC § 26010)

3) Requires licensed sellers of cannabis or cannabis products to have a representative sample tested by a licensed testing laboratory. (BPC § 26100(a))

4) Requires DCC to develop criteria to determine which batches shall be tested, where all testing of the samples shall be performed on the final form in which the cannabis or cannabis product will be consumed or used. (BPC § 26100(b))

5) Requires a testing laboratory to issue a certificate of analysis (COA) where the chemical profile of the sample conforms to the labeled content of specified compounds, and where the presence of contaminants does not exceed the level established by DCC, as specified. (BPC § 26100(d))

6) Specifies that for edible cannabis products, the milligrams of THC per serving shall deviate from 10 milligrams by more than 10 percent. (BPC § 26100(d)(3)).

7) Allows a testing laboratory to amend a COA to correct minor errors, as defined by DCC. (BPC § 26100(e)).

8) Requires that standard for residual levels of volatile organic compounds be established by DCC. (BPC § 26100(f)(1))

9) Requires DCC, on or before January 1, 2023, to establish one or more standard cannabinoid test methods, including standardized operating procedures that must be used by all testing laboratories. (BPC § 26100(f)(2))

10) Requires the testing laboratory to conduct all testing in a manner consistent with general requirements for the competence of testing and calibration activities, including sampling and using verified methods. (BPC § 26100(g))

11) Requires all testing laboratories performing tests to obtain and maintain ISO/IEC 17025 accreditation as required by DCC in regulation. (BPC § 26100(h))

12) Specifies that if a test result falls outside the specifications authorized by law or regulation, the testing laboratory shall follow a standard operating procedure to confirm or refute the original result. (BPC § 26100(i)(1))

13) Authorizes a testing laboratory to retest the sample if both the testing laboratory notifies DCC in writing, that the test was compromised due to equipment malfunction, staff error, or other circumstances allowed by DCC *and* DCC authorizes the testing laboratory to retest the sample. (BPC § 26100(i)(2))

14) Requires a testing laboratory to destroy the remains of the sample of cannabis or cannabis product upon completion of the analysis, as determined by DCC through regulations. (BPC § 26100(j))

15) Prohibits a testing laboratory from being licensed by DCC unless the laboratory meets all of the following:

    a) Complies with any other requirements specified by the department.

    b) Notifies the department within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.

    c) Has established standard operating procedures that provide for adequate chain of custody controls for samples transferred to the testing laboratory for testing. (BPC § 26102)

16) Prohibits, except as provided, a testing laboratory from acquiring or receiving cannabis or cannabis products except from a licensee or from distributing, selling, or dispensing cannabis or cannabis products from the licensed premises from which the cannabis or cannabis products were acquired or received. (BPC § 26104(c))

17) Defines “edible cannabis product” to mean means a cannabis product that is intended to be used, in whole or in part, for human consumption, as specified. (BPC § 26001(v))

18) Defines “cannabis beverage” as a form of edible cannabis product that is intended to be consumed in its final state as a beverage. (BPC § 26001(g))

**THIS BILL:**

1) Requires DCC to establish regulations to adjust testing variances for edible cannabis products that include less than five milligrams of THC in total.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the *Cannabis Beverage Association*. According to the author,

> [This bill] is a critical step forward in regulation of the legal cannabis industry, keeping consumer safety and accurate label declaration for content in the forefront while ensuring testing requirements are science based. In this way, unneeded scrap and rework does become part of product costs, which are ultimately passed on to the consumer. This legislation will level the playing field between cannabis beverages and edible cannabis products for those under 10 milligrams. This bill is another important step to ensure fairness and efficiency in an industry that is still taking shape here in California. Current regulations simply do not reflect optimal conditions for the cannabis industry, it is critical that the Legislature rewards those who play by the rules within the legal cannabis market.

**Background.**

*Department of Cannabis Control.* 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]

*Cannabis Beverages and Other Edible Products.* "Edible cannabis product" is defined in statute as a cannabis product that is intended to be used, in whole or in part, for human consumption (including chewing gum).[2] This broad definition captures both solid edibles (e.g., cookies or gummies) as well as liquid edibles (i.e. cannabis beverages).

Existing law includes a number of provisions aimed primarily at ensuring that manufactured products are safe for consumers and unappealing to children. Specifically, MAUCRSA requires that all edible cannabis products be:

> (1) Not designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis.
>
> (2) Produced and sold with a standardized concentration of cannabinoids not to exceed 10 milligrams of THC per serving.
>
> (3) Delineated or scored into standardized serving sizes if the cannabis product contains more than one serving and is an edible cannabis product in solid form.
>
> (4) Homogenized to ensure uniform disbursement of cannabinoids throughout the product.
>
> (5) Manufactured and sold under sanitation standards established by DCC that are similar to the standards for the preparation, storage, handling, and sale of food products.
>
> (6) 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.

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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] BPC § 26001(h)

(7) Marked with a universal symbol.[3]

*Cannabis testing.* Cannabis products are required to be tested before they can be sold to ensure that they are free of contaminants (e.g., pesticides) and labeled with accurate amounts of cannabinoids and terpenes.[4] Results are reported on a Certificate of Analysis (COA), which is required to be uploaded to DCC's track and trace system and emailed directly to DCC[5]. If cannabis products fail a test, the entire batch of goods must be destroyed by the distributor or remediated by a manufacturer.[6] Remediation is the process of removing contaminants from a product and must be approved by DCC in advance.[7] After remediation, the cannabis goods are re-tested. If they pass, then the goods can be sold.[8]

Cannabis testing laboratories must be licensed by DCC, maintain ISO accreditation, use standardized operating procedures, develop a laboratory quality assurance program, and participate in a proficiency testing program.[9]

Existing law currently prohibits edible cannabis products from containing more than 10 milligrams of THC per serving, *plus or minus 10 percent*.[10] This is to account for natural variance within products. Products that exceed the allowed variance must be destroyed. The author and sponsor contend that edible cannabis products with low levels of THC potency of THC fail a test and are required to be thrown out because the amount of variance allowed is less for products with lower potency levels of THC. For example, an edible product with 10 milligrams of THC *per serving*, is permitted to have nine to 11 milligrams (a two-milligram range) of THC per serving, whereas an edible product with 2 milligrams of THC per serving, could only have 1.8 milligrams to 2.2 milligrams (a .4-milligram range) of THC per serving. This bill would require DCC to modify the testing variances for edible cannabis products containing less than five milligrams of THC *in total*, thereby accounting for differences in actual variance allowed for edible products with less THC compared to edible products with high amounts of THC.

**Current Related Legislation.**

*AB 1610 (Jones-Sawyer)* would 1) require DCC to list cannabis product recall orders on its website; 2) subject testing laboratories to blind proficiency testing; 3) require DCC by January 1, 2025, to establish a standard laboratory blind proficiency test method for use by all testing laboratories; 4) require DCC to audit testing laboratories annually and to publish the results of those audits, including any record of a violation, on its website; 5) require DCC by January 1, 2025, to establish standard operating procedures for conducting audits, including frequency, manner, and notification requirements; and require DCC by January 1, 2025, to establish quality assurance standards and testing procedures for products available for retail sale. *Pending in this committee.*

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[3] BPC § 26130(c)
[4] Department of Cannabis Control. (n.d.). *Testing laboratories*. Department of Cannabis Control. Retrieved April 12, 2023, from https://cannabis.ca.gov/licensees/testing-laboratories/
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] BPC § 26100(d)(3)

**Prior Related Legislation.**

*SB 544 (Laird) Chapter 547, Statutes of 2021*, required DCC to establish standardized cannabinoid test methods to be used by all testing laboratories by January 1, 2023.

*AB 1646 (Chen), Chapter 388, Statutes of 2022*, allowed cannabis beverages to be packaged in containers made of any material that is clear or any color.

*AB 2155 (Villapudua) Chapter 33, Statutes of 2022*, defined "cannabis beverage" as a form of edible cannabis product that is intended to be consumed in its final state as a beverage.

*AB 1222 (Chen), Chapter 532, Statutes of 2021*, provided that cannabis beverages may be packaged in glass containers that are clear or any color.

**ARGUMENTS IN SUPPORT:**

The sponsor of this bill, the Cannabis Beverage Association, writes in support:

> [This bill] will level the playing field for cannabis beverages and edible cannabis products which are under the threshold of 5 milligrams by requiring the Department of Cannabis Control (DCC) to establish regulations to adjust testing variances for edible and beverage cannabis products that include less than 5 milligrams of THC. This bill recognizes that with different quantities of THC, should come different rules, a one size fits all approach serves neither the distributor nor the consumer.

**ARGUMENTS IN OPPOSITION:**

None on file.

**REGISTERED SUPPORT:**

Cannabis Beverage Association (sponsor)
SoRSE Technology

**REGISTERED OPPOSITION:**

None on file.

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

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 687 (Hart) – As Amended April 11, 2023

**SUBJECT:** California Cannabis Authority.

**SUMMARY:** Requires the Department of Cannabis Control (DCC) to grant local agencies read access to its electronic track and trace database and ensure that the track and trace database captures the ZIP Code of the delivery address if the sale of cannabis or cannabis products is conducted by delivery.

**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) §§ 26000-26325)

2) Establishes DCC within the Business, Consumer Services, and Housing Agency for purposes of administering and enforcing MAUCRSA. (BPC § 26010)

3) Requires DCC to establish a track and trace program for reporting the movement of cannabis and cannabis products throughout the distribution chain that utilizes a unique identifier and is capable of providing information that captures, at a minimum, all of the following:

    a) The licensee from which the product originates and the licensee receiving the product.

    b) The transaction date.

    c) The unique identifier or identifiers for the cannabis or cannabis product.

    d) The date of retail sale to a customer and whether the sale is conducted on the retail premises or by delivery.

    e) Information relating to cannabis and cannabis products leaving the licensed premises in a delivery vehicle as determined by regulations adopted pursuant to subdivision (d) of Section 26068.

    (BPC § 26067(a))

4) Requires DCC, in consultation with the California Department of Tax and Fee Administration, to create an electronic database containing the electronic shipping manifests to facilitate the administration of the track and trace program, which must include, but not be limited to, the following information:

    a) The variety and quantity or weight of cannabis or cannabis products shipped.

    b) The estimated times of departure and arrival.

c) The variety and quantity or weight of cannabis or cannabis products received.

d) The actual time of departure and arrival.

e) A categorization and the unique identifier of the cannabis or cannabis product.

f) The license number issued by the department for all licensees involved in the shipping process, including, but not limited to, cultivators, manufacturers, distributors, and retailers.

(BPC § 26067(b)(1))

g) Requires the database to be designed to flag irregularities for DCC to investigate. (BPC § 26067(b)(2))

5) Authorizes DCC and state and local agencies to, at any time, inspect shipments and request documentation for current inventory. (BPC § 26067(b)(3))

6) Requires the California Department of Tax and Fee Administration to have read access to the electronic database for the purpose of taxation and regulation of cannabis and cannabis products. (BPC § 26067(b)(4))

7) Specifies that information received and contained in records kept by DCC are confidential and cannot be disclosed pursuant to a California Public Records Act request, except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties. (BPC § 26067(b)(5))

8) Requires DCC, upon the request of a state or local law enforcement agency, to allow access to or provide information contained within the database to assist law enforcement in their duties and responsibilities related to the enforcement and compliance with MAUCRSA. (BPC § 26067(b)(6))

**THIS BILL:**

1) Requires DCC's track and trace program to capture the ZIP Code of the delivery address if the sale of cannabis or cannabis products is conducted by delivery.

2) Requires DCC to grant local agencies read access to the electronic track and trace database, including the track and trace program data through a secure application programming interface (API) or comparable technology, 24 hours per day, 7 days per week, for the purpose of providing local agencies licensee and relevant transactional information in support of local taxation and regulation of cannabis and cannabis products, and for locally relevant research into the commercial cannabis marketplace.

3) Specifies that any software, database, or other information technology system utilized by DCC for the issuance, maintenance, or revocation of state licenses must support interoperability with the software of local agencies to allow the exchange of state and local licensing information, notices, and other reporting required or authorized between DCC and local agencies.

4) Requires local agencies to maintain data privacy policies in accordance with state standards to ensure there is no unauthorized access of licensees' data.

5) Defines "local agency" to mean either of the following:

   a) The California Cannabis Authority formed on January 12, 2018, under a joint powers agreement entered into pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

   b) Any public local agency composed of multiple public entities with a demonstrated capability to do all of the following:

      i) Aggregate and geoparse data in an electronic database for each city, county, or city and county licensing or taxing commercial cannabis.

      ii) Provide visualization of the aggregated and geoparsed data for each city, county, or city and county.

      iii) Distribute to any requesting local licensing agency jurisdictionally relevant commercial cannabis data in a readily usable format.

6) Includes legislative findings and declarations.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the *California Cannabis Authority* (CAA). According to the author:

> Proposition 64 allowed local communities to decide how cannabis would best fit in their community. Unfortunately, the lack of state support has made it difficult for local governments to manage and deter illegal cannabis growth. [This bill] will provide local agencies with access to state data that tracks cannabis activity from seed to sale. With this information, cities and counties can make informed decisions on cannabis-related public policy.

**Background.**

*Track and Trace.* Cannabis licensees (i.e. cultivators, manufacturers, laboratories, distributors, and retailers) are required to use the California Cannabis Track and Trace (CCTT) system enabling DCC to monitor cannabis and cannabis products as they move through the supply chain—otherwise known as "seed to sale" tracking. DCC currently contracts with METRC, Inc., a web-based software that is accessible via the internet or third-party interface. It is understood that, to date, no local jurisdiction has been granted access to the database, despite existing law which requires DCC, upon the request of a state or local law enforcement agency, to allow access to or provide information contained within the database to assist law enforcement in their duties and responsibilities related to the enforcement and compliance with MAUCRSA. The author and sponsor of this bill contend that DCC provides raw data in PDF format on an ad hoc basis.

*California Cannabis Authority.* CAA, the sponsor of this bill, is a Joint Powers Authority established by county governments to provide data analytics for purposes of regulating commercial cannabis in those jurisdictions.[1] Their NCS Analytics platform aggregates data from multiple sources, including the state's track and trace database, which is then analyzed and used for tax, law enforcement, public health, and community planning purposes.[2] Although JPA membership is limited to counties, cities and other public agencies may enter into a "Participation Agreement" (a Memorandum of Understanding (MOU)) with CAA to obtain access to the data platform.[3] Financial institutions are also authorized by statute to contract with CCA for access to its database.[4] CCA members (i.e. counties) and participants (i.e. cities and public agencies) are required to pay a fees as determined by the CCA Board of Directors. Under the current fee structure, members and participants are required to pay a base membership fee (cities pay less) in addition to usage fees to ensure that what jurisdictions pay is commensurate with their use of the platform.[5] At the time of this writing, CCA's membership includes Humboldt, Mendocino, Monterey, San Luis Obispo, Santa Barbara, Yolo, and Inyo counties.[6]

According to CCA, licensee data stored in its platform is not subject to public disclosure under the Public Records Act and its platform adheres to federal security standards.[7] Additionally, data shared with other public agencies in accordance with an MOU with specific security and requirements.[8]

On its website, CAA asserts that:

> CCA's data platform, however, begins where the State's [track and trace (TaT)] system stops. TaT systems are built to compile information, not necessarily analyze it or provide it to regulators in a meaningful context. Moreover, California's TaT system essentially aggregates data from a single source; licensees.
>
> CCA's platform is not constrained to a single source of data and not designed to aggregate data per se but to analyze aggregated data, evaluate it in context, and provide users with actionable intelligence on that data. The CCA data platform puts an otherwise unmanageable tidal wave of commercial cannabis transactional data into meaningful, actionable intelligence in support of local licensing, code enforcement, and tax collection.
>
> The platform looks for anomalies with individual data sources and also looks at how those sources interact with one another, giving a more complete picture and a higher degree of confidence that what is being reported and what is occurring are truly one and the same. When they are not the same, the Platform creates an alert. The speed at which

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[1] California Cannabis Authority. (n.d.). *About Us*. California Cannabis Authority. Retrieved April 14, 2023, from https://cca.ca.gov/about-us/
[2] Ibid.
[3] California Cannabis Authority. (n.d.). *Local Government*. California Cannabis Authority. Retrieved April 14, 2023, from https://cca.ca.gov/local-government/
[4] BPC § 26260
[5] California Cannabis Authority. (n.d.). *Local Government*. California Cannabis Authority. Retrieved April 14, 2023, from https://cca.ca.gov/local-government/
[6] California Cannabis Authority. (n.d.). *Member Counties*. California Cannabis Authority. Retrieved April 14, 2023, from https://cca.ca.gov/about-us/member-counties/
[7] California Cannabis Authority. (n.d.). *FAQs*. California Cannabis Authority. Retrieved April 14, 2023, from https://cca.ca.gov/faqs/
[8] Ibid.

> the alert is delivered is key for investigation and enforcement actions to correct bad behaviors and catch bad actors quickly and more efficiently.[9]

This bill would require DCC to grant local agencies, namely CCA, direct read access to the track and trace database. The author and sponsor contend that DCC has not fulfilled its obligation to provide local jurisdictions with timely, useful data.

**Current Related Legislation.**

*SB 622 (Allen)* would allow the unique identifier used to track each cannabis plant to be attached at the base of each plant, in close proximity to each plant, as determined by DCC, or in a manner otherwise required by regulation. *Pending in the Senate Business, Professions and Economic Development Committee.*

**Prior Related Legislation.**

*AB 1288 (Cooley) of 2019* would have, as it relates to this bill, required the track and trace program to include the date of retail sale of cannabis and whether the sale is on retail premises or by delivery. *Held on the Senate Appropriations Suspense File.*

*SB 658 (Bradford) of 2019* would have, as it relates to this bill, authorized a local jurisdiction to access or receive information from the track and trace database to assist in their duties and responsivities related to the recreational cannabis market. *Held on the Senate Appropriations Suspense File.*

*AB 141 (Assembly Budget Committee) Chapter 70, Statutes of 2021*, as it relates to this bill, made numerous technical and conforming changes to the track and trace program to reflect the creation of DCC to replace the former three cannabis licensing entities.

*AB 195 (Assembly Budget Committee) Chapter 56, Statutes of 2022*, as it relates to this bill, required the track and trace program to capture the date of retail sale to a customer and whether the sale is conducted on the retail premises or by delivery in addition to information relating to cannabis and cannabis products leaving licensed premises in a delivery vehicle as determined by regulations.

**ARGUMENTS IN SUPPORT:**

The sponsor of this bill, CCA, writes in support:

> This bill would support local jurisdictions with cannabis regulatory and tax programs by providing access to critical California Cannabis Track and Trace (CCTT) data, allowing cities and counties to make data-driven enforcement and regulatory decisions. [This bill] would also add important information related to cannabis deliveries into the CCTT system to help local governments better understand where transactions are taking place and provide appropriate oversight.
>
> […]

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[9] Ibid.

A key component to ensuring the success of the legal cannabis market in California is focusing compliance efforts on illicit activities and prioritizing enforcement efforts on those actors that are operating outside of the legal market. While local governments are working diligently to license operators within their jurisdiction, additional tools are needed to help bolster enforcement efforts at the local level. A critical component of these efforts is access to data. Despite the Adult Use of Marijuana Act's (AUMA) requirement for the state to provide local jurisdictions with CCTT data, the Department of Cannabis Control has yet to convey appropriate data efficiently and systematically to local jurisdictions. In the absence of consistent data sharing, local governments must either replicate commercial cannabis data or regulate with limited information.

CCA is a Joint Powers Authority created by California counties to assist local governments that are regulating cannabis, providing tools and analysis to help ensure better regulatory outcomes. CCA and its member counties have worked together to operationalize a data platform that takes CCTT data, currently provided by local licensees, and applies analytics to help turn raw data into actionable information on commercial cannabis activity. CCA's platform gives local regulators the power to conduct data-driven enforcement and compliance and make programmatic decisions quickly, efficiently and founded on facts.

**ARGUMENTS IN OPPOSITION:**

None on file.

**POLICY ISSUE(S) FOR CONSIDERATION:**

*Local agency access to track and trace database.* This bill, as currently drafted, would require DCC to grant CCA and like organizations direct read access to the track and trace. Nothing in the bill would prohibit a local agency from accessing data related to local jurisdictions that are not members or participants of their agency. The author may wish to amend the bill to specify that CCA or other local agency may only access the track and trace database on behalf of the local jurisdictions that it contracts with for data analysis.

**REGISTERED SUPPORT:**

California Cannabis Authority (sponsor)
County of Monterey
County of Santa Barbara

**REGISTERED OPPOSITION:**

None on file.

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

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 936 Wood – As Amended April 13, 2023

**SUBJECT:** Dentistry: exemptions.

**SUMMARY:** Expands an exemption that allows a final-year dental student to provide volunteer dental services without a license to instead allow any dental student who has started clinical training.

**EXISTING LAW:**

1) Regulates the practice of dentistry under the Dental Practice Act and establishes the Dental Board of California (DBC) within the Department of Consumer Affairs (DCA) to administer and enforce the act. (Business and Professions Code (BPC) §§ 1600-1976)

2) Defines "dentistry" as the diagnosis or treatment, by surgery or other methods, of diseases and lesions and the correction of malpositions of the human teeth, alveolar process, gums, jaws, or associated structures and may include all necessary related procedures and the use of drugs, anesthetic agents, and physical evaluation. (BPC § 1625)

3) Prohibits any person from engaging in the practice of dentistry unless the person has a valid, unexpired license or special permit from the DBC, except as specified, including students in DBC-approved dental schools, extension programs, or advanced dental education programs. (BPC § 1626)

4) Authorizes final-year dental students in a DBC-approved dental program to practice dentistry without a license if the dental services are provided without compensation under the supervision of a licensed dentist with a clinical faculty appointment at a sponsored event. (BPC § 1626.6)

5) Defines the following for purposes of final-year dental students providing volunteer dental services at a sponsored event:

    a) "Final year student" means a student of dentistry in the student's final year of completion at a dental school approved by the board. "Final year student" also includes a dental student enrolled in an advanced dental program. (BPC § 1626.6(b)(1))

    b) "Sponsored event" means an event, not to exceed 10 calendar days, administered by a sponsoring entity or a local governmental entity, or both, through which health care is provided to the public without compensation or expectation of compensation. (BPC § 1626.6(b)(4))

    c) "Sponsoring dental school" means a dental school that sanctions student and clinical faculty participation at a sponsored event. (BPC § 1626.6(b)(5))

    d) "Sponsoring entity" means a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code or a community-based organization. (BPC § 1626.6(b)(6))

6) Requires the volunteer practice of dentistry by students to comply with all of the following:

   a) Each patient must be sufficiently informed that a dental student may be providing some of the treatment that the patient will be receiving. (BPC § 1626.6(c)(1))

   b) Any information provided to the patient to give informed consent must offer the patient the option to decline to be treated by the student. (BPC § 1626.6(c)(2))

   c) The volunteer practice of a student must be supervised by clinical faculty from the dental school in which the student is enrolled. (BPC § 1626.6(c)(3))

   d) Each volunteer student must wear an identification badge that clearly identifies the student as a dental student. The identification badge must display, in at least 14-point font, the student's name, the name of the student's dental school, and the name and telephone number of the DBC. (BPC § 1626.6(c)(4))

   e) Supervision ratios and student oversight must be at least as stringent as the standards set for the procedure being performed by the student and the age of the patient, in accordance with the standards at the sponsoring dental school's clinical department, laboratory, or dental extension program. (BPC § 1626.6(c)(5))

   f) The student may perform only those procedures in which the student is credentialed or those procedures the student is permitted to perform in the school's clinical department, laboratory, or dental extension program. (BPC § 1626.6(c)(6))

   g) The student or the student's sponsoring dental school must ensure liability insurance coverage is obtained that covers all services provided by the student, including diagnosis, treatment, and evaluation. (BPC § 1626.6(d))

   h) The sponsoring entity of the sponsored event must provide the DBC with a list of the names of the students practicing dentistry at the sponsored event, the name of the school of enrollment of those students, and the name and license number of the supervising licensed dentist. (BPC § 1626.6(e))

**THIS BILL:**

1) Expands the authorization for final-year dental students to provide volunteer dental services without a license under the supervision of clinical faculty at a sponsored event to instead authorize any dental student who has begun clinical training by doing the following:

   a) Replacing the definition of "final year student" with a definition of "dental student."

   b) Defining "dental student" as a person who has begun clinical training at a dental school approved by the DBC.

2) Clarifies that, for any clinical procedures, the designated supervising faculty is responsible for assessing the patients treated by each student and determining if the assigned student has the skill level to provide that patient care.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the *Western University of Health Sciences*. According to the author, "Providing care at free health care and dental clinics is an opportunity for dental students to provide much needed care to underserved people and to learn the importance of giving back to their community. The skills of dental students are well known by their faculty and can be provided appropriately under the faculty's supervision. Volunteering to work in free health care and dental clinics can inspire dental students to continue to volunteer once they have become licensed practitioners, bolster the volunteer workforce and increase access to care."

**Background.** Existing law prohibits the practice of dentistry without a dental license or special permit issued by the DBC, except in specified circumstances. One of the exemptions is for dental students in their final year in a DBC-approved dental school. The exemption allows students to volunteer and provide dental treatment to patients under faculty supervision at sponsored free health care and dental clinics.

This bill would expand the exemption to include any dental student as long as the student has begun their clinical training. According to the sponsors, dental school students in four-year programs usually begin their clinical training after their first year. However, that can vary, some programs are compressed into three years. Ultimately, it will be up to the supervising faculty and the dental school to determine the competence of the student and the level of services the student can provide.

**Prior Related Legislation.** AB 880 (Ridley-Thomas), Chapter 409, Statutes of 2015, authorized final-year dental students to provide volunteer dental services without a license at sponsored events under the supervision of licensed faculty.

**ARGUMENTS IN SUPPORT:**

The *Western University of Health Sciences* (sponsor) supports allowing "dental students to provide much needed care to underserved communities at free health care and dental clinics providing an opportunity to learn the importance of giving back to their community. The skills of dental students are well known by their faculty and can be provided appropriately under the faculty's supervision. Volunteering to work in free health care and dental clinics can inspire dental students to continue to volunteer once they have become licensed practitioners, bolster the volunteer workforce and increase access to care."

The California Association of Oral and Maxillofacial Surgeons (CALAOMS) (co-sponsor) writes in support:

> In 2015, CALAOMS sponsored AB 880 (Ridley-Thomas), which was approved by Governor Brown. The bill allowed dental students enrolled in their final year of completion in a California dental school to treat patients under faculty supervision at sponsored free healthcare and dental clinics. Since becoming law seven years ago, the provisions of AB 880 have significantly increased the volunteer workforce at the much-needed free clinics, However, the time has come to add to the student volunteer workforce. Unfortunately, competing educational and professional obligations have diminished the number of student volunteers available to participate in the clinics that are often held in the Spring of the year.

> [This bill] seeks to update AB 880, by authorizing dental students who have begun clinical training at a dental school approved by the Dental Board of California (DBC) to provide supervised care at free clinics regardless of their year in dental school. In addition to enhancing and expanding the qualified dental volunteer workforce, students are provided clinical experience, which will serve them well in their future careers. Additionally, these student volunteers are hopefully inspired to continue their volunteerism once they are licensed to practice dentistry in their respective communities.

**ARGUMENTS IN OPPOSITION:**

None on file

**REGISTERED SUPPORT:**

Western University of Health Sciences (sponsor)
California Association of Oral and Maxillofacial Surgeons (co-sponsor)
Association of Independent California Colleges & Universities
California Association of Orthodontists
California Dental Association
Care Harbor
Healing California
Special Olympics Southern California
UCLA School of Dentistry
Herman Ostrow School of Dentistry of USC

**REGISTERED OPPOSITION:**

None on file

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

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1207 (Irwin) – As Amended March 16, 2023

**SUBJECT:** Cannabis: labeling and advertising.

**SUMMARY:** Places restrictions on the advertising, marketing, packaging, and labeling of cannabis and cannabis products, requires single-serving edible product packaging, and bans the use of flavors in cannabis or cannabis products intended for use by inhalation or combustion.

**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 Department of Cannabis Control (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 requirements as well as local laws and ordinances. (BPC § 26030)

5) Subjects cannabis businesses operating without a license to civil penalties of up to three times the amount of the license fee for each violation in addition to any criminal penalties. (BPC § 26038)

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

7) Prohibits a cannabis retailer or microbusiness from selling alcoholic beverages or tobacco products on their premises. (BPC § 26054)

8) 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)

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

10) 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))

11) Requires the DCC to promulgate regulations setting standards for the manufacturing, packaging, and labeling of all manufactured cannabis products, including a requirement that edible products be delineated or scored into standardized serving sizes if the cannabis product contains more than one serving and is an edible cannabis product in solid form. (BPC § 26130)

12) Defines "advertisement" as any written or verbal statement, illustration, or depiction which is calculated to induce sales of cannabis or cannabis products, including any written, printed, graphic, or other material, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include product label or news publications. (BPC § 26150)

13) Requires that all advertisements accurately and legibly identify the licensee responsible for its content, by adding, at a minimum, the licensee's license number, and prohibits an outdoor advertising company from displaying an advertisement by a licensee unless the advertisement displays the license number. (BPC § 26151)

14) 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)

15) 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)

16) Exempts from the prohibition against advertising within 1,000 feet of a day care, school, playground, or youth center the placement of advertising signs inside a licensed premises and which are not visible by normal unaided vision from a public place, provided that such advertising signs do not advertise cannabis or cannabis products in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products. (BPC § 26155)

**THIS BILL:**

1) Defines "attractive to children" as meaning any of the following:

a) Use of images that are attractive to children, including, but not limited to, Cartoons, toys, or robots; humans, animals, or any other real or fictional animate creature; or fruits or vegetables.

b) Any likeness to images, characters, or phrases that are popularly used to advertise to children.

c) Any imitation of candy packaging or labeling, or other packaging and labeling of cereals, sweets, chips, or other food products typically marketed to children.

d) The terms "candy" or "candies" or variants in spelling such as "kandy" or "kandee."

e) Brand names or close imitations of brand names of candies, cereals, sweets, chips, or other food products typically marketed to children.

f) Any other image or packaging that is easily confused with commercially available foods that do not contain cannabis and are typically marketed to children.

2) Expressly prohibits a manufacturer, distributor, or seller of cannabis or cannabis products from manufacturing, distributing, or selling any cannabis or cannabis product that is attractive to children.

3) Prohibits the name of any flavor or descriptor of flavor from appearing on the package or label of an edible cannabis product in greater than eight-point font if it would imply to a reasonable consumer that the edible cannabis product contains any artificial, synthetic, or natural flavoring other than the natural flavor or aroma of cannabis.

4) Requires edible cannabis products to be composed only of fully physically separated individual doses and prohibits cannabis beverages from exceeding one dose per container.

5) Strikes a provision that allows for edible cannabis products to be delineated or scored into standardized serving sizes if the cannabis product contains more than one serving.

6) Requires edible cannabis products to be free of any natural or artificial coloring if the edible cannabis product is a hard candy or gummy.

7) Prohibits cannabis or cannabis products intended for use by inhalation or combustion, including vaping accessories from containing any artificial, synthetic, or natural flavoring other than the natural flavor or aroma of cannabis.

8) Prohibits cannabis or cannabis products intended for use by inhalation or combustion, such as vaping products or strains of cannabis flower, from containing any descriptor of flavor that would imply to a reasonable consumer that the product or accessory contains flavors other than the natural flavor or aroma of cannabis.

9) Provides that the prohibited flavors include, but are not limited to, menthol, mint, mango, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, coffee, popcorn, and bubblegum.

10) Expressly prohibits an advertiser of cannabis or cannabis products from advertising or marketing in ways that are attractive to children.

11) Requires the DCC to adopt emergency regulations to implement new requirements imposed by the bill.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

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

> "Since the passage of Proposition 64, pediatric exposures to cannabis have increased exponentially. These exposures are heavily influenced by the use of features on cannabis product packaging that are explicitly attractive to children. Children who unintentionally consume cannabis consistently require poison control treatment, and in many cases they can also expose their fellow elementary and middle school peers to cannabis. AB 1207 is a necessary step which protects California's children from cannabis poisonings by combating the packaging and advertisements on cannabis products which are clearly meant to be attractive to children."

**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 California Department of Public Health—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.

*Advertising and Labeling Restrictions.* Prior to the AUMA being passed by the voters, arguments both for and against the initiative frequently focused on a debate over whether Proposition 64 would adequately protect children from exposure to the cannabis industry. In the official text of Proposition 64, the purpose and intent of the initiative was stated to include an intention to "prohibit the marketing and advertising of nonmedical marijuana to persons younger than 21 years old or near schools or other places where children are present." The AUMA includes a number of specified safeguards for minors, including:

- Prohibiting consumption of cannabis outside a residence within 1,000 feet of a school, day care center, or youth center while children are present.
- Requiring child-resistant packaging for cannabis products.
- Prohibiting packages and labels from being made to be attractive to children.
- Providing that cannabis products shall not designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain marijuana.
- Prohibiting cannabis businesses from being located within 600 feet of schools and other areas where children congregate.
- Authorizing a licensing authority to deny a license if there is an unreasonable risk of minors being exposed to cannabis or cannabis products.
- Expressly prohibiting businesses selling recreational cannabis to minors under 21 or employing minors under 21.

Additionally, Proposition 64 included a prohibition against advertisers publishing or disseminating "advertising or marketing containing symbols, language, music, gestures, cartoon characters or other content elements known to appeal primarily to persons below the legal age of consumption." This language was heavily simplified when MCRSA and the AUMA were reconciled through the enactment of SB 94. Under MAUCRSA, licensees are instead prohibited more generally from publishing or disseminating "advertising or marketing that is attractive to children." However, similar language was incorporated into regulations previously promulgated by the Bureau of Cannabis Control in rules governing advertisements placed in broadcast, cable, radio, print, and digital communications.

Following the consolidation of the state's cannabis regulators into the DCC on July 1, 2021, new regulations were proposed to further simplify and streamline rules relating to licensed cannabis activity. These regulations scaled down the number of examples of what types of advertising would be deemed "attractive to children." The specific examples of "toys, inflatables, movie characters, [and] cartoon characters" were replaced with a prohibition against cartoons, depictions of minors, or "any likeness to images, characters, or phrases that are popularly used to advertise to children."

The revised regulations also incorporated other prohibition language previously applied only to labeling requirements into the more general advertising restrictions. This includes prohibitions against products containing any imitation of candy packaging or labeling or using the term "candy" or "candies" or variants in spelling such as "kandy" or "kandeez." The regulations also prohibit the advertising of free cannabis goods or accessories.

While the above prohibitions are contained in provisions of the DCC's regulations relating to advertising and marketing, these prohibitions apply to the packaging and labeling of cannabis goods as well. MAUCRSA requires the DCC to promulgate regulations to set standards for the manufacturing, packaging, and labeling of all manufactured cannabis products. The DCC's regulations specifically cross-reference the advertising content restrictions in language prohibiting cannabis goods labeling from containing "content that is, or is designed to be, attractive to individuals under the age of 21." The DCC's regulations further prohibit the selling of "any cannabis product that the Department determines, on a case-by-case basis," to be either "attractive to children" based on the above criteria, or "easily confused with commercially available foods that do not contain cannabis."

This bill would amend MAUCRSA to include a new definition of "attractive to children" that would again codify specific examples of prohibited advertisements and product labels. The definition would expressly ban the use of images including "cartoons, toys, or robots"; "humans, animals, or any other real or fictional animate creature"; and "fruits or vegetables." Some of these specific examples are already prohibited in the DCC's regulations. However, the bill would ban any depictions of humans, animals, and fruits or vegetables beyond the arguably broader but less specific prohibitions contained in regulations.

This bill would also extend the prohibition in regulations against "any imitation of candy packaging or labeling." The language would also ban any the imitation of cereals, sweets, chips, or other food products that are typically marketed to children, which is arguably already encompassed in current regulations but without that degree of specificity. The author intends for this expanded prohibition to apply to various cannabis products that have been identified as available in retailers that resemble popular commercial goods such as OREO cookies, Rice Krispies Treats, Cocoa PEBBLES, and the McFlurry dessert item from McDonalds.

In addition to codifying an expanded definition of "attractive to children," this bill would further restrict the packaging and labeling of cannabis goods by providing that "any flavor or descriptor of flavor shall not appear on the package or label of an edible cannabis product in greater than eight-point font if it would imply to a reasonable consumer that the edible cannabis product contains any artificial, synthetic, or natural flavoring other than the natural flavor or aroma of cannabis." Essentially, if a cannabis-infused chocolate bar could not prominently feature the word "chocolate"; similarly, a cannabis-infused orange soda could not prominently feature the word "orange." This language is presumably intended to prevent minors of a reading age from becoming attracted to an edible cannabis product based on a label that describes enticing flavors.

*Edible Product Composition and Portioning.* In addition to the rules described above, the DCC's regulations governing the manufacturing, packaging, and labeling of all manufactured cannabis products feature various requirements and prohibitions relating to the manufacturing process and what ingredients can be used in the cannabis goods. The regulations specifically prohibit "any cannabis product in, or imprinted with the shape, either realistic or caricature, of a human being, animal, insect, or fruit." This prohibition arguably prohibits gummies or candies from resembling those contained in child-friendly noncannabis "fruit snacks." This bill would additionally prohibit the use of any natural or artificial coloring in any edible cannabis product that is a hard candy or gummy. This would mean that the majority of cannabis-infused gummies would appear brown or gray, further limiting their attractiveness to children.

While Proposition 64 places a maximum concentration of tetrahydrocannabinol (THC) in edible cannabis products for recreational consumption at no more than 10 milligrams per serving, a single cannabis product is allowed to contain multiple servings. The DCC's regulations reflect a requirement in MAUCRSA that solid edible cannabis products containing more than one serving be delineated or scored into standardized serving sizes. Under the regulations, a chocolate bar could contain up to a maximum of 100 milligrams THC per package if eaten in its entirety, as long as it can be easily broken into servings that each contain an amount of 10 milligrams THC or less. The DCC's regulations additionally require the packaging of edible cannabis goods containing multiple servings to be resealable and to be marked or packaged in a manner such that a single serving is readily identifiable or measurable.

This bill would require all edible cannabis products to be composed only of fully physically separated individual doses. The requirement that solid products containing multiple doses be delineated or scored into serving sizes would be struck, as it would no longer be applicable. The bill would further specify that cannabis-infused beverages may not exceed one dose per container.

*Restrictions on Flavors for Vaped or Smoked Products.* In addition to regulating the composition of edible cannabis products, this bill would impose new limitations on cannabis and cannabis products that are sold for use by inhalation or combustion, including through cannabis cartridges and integrated cannabis vaporizers. The bill would prohibit products from containing "any artificial, synthetic, or natural flavoring or any descriptor of flavor that would imply to a reasonable consumer that the product or accessory contains flavors other than the natural flavor or aroma of cannabis." The bill would additionally specify that "menthol, mint, mango, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, coffee, popcorn, and bubblegum" are among the categories of flavors that would be prohibited.

It could be argued that these restrictions would impose the same flavor restrictions on cannabis and cannabis products that were recently imposed on tobacco products. In 2020, the Legislature enacted SB 793 (Hill), which prohibited retailers selling flavored tobacco products or a tobacco product flavor enhancers, with some exceptions. This ban applied to combustible cigarettes and cigars as well as electronic cigarettes and other vaping products. SB 793 was challenged unsuccessfully in court, and a referendum was placed on the 2022 ballot in California that resulted in nearly two-thirds of voters choosing to uphold the legislation.

In addition to prohibiting the use of artificial, synthetic, or natural flavors in cannabis products, this bill would further prohibit flavor *descriptors*. This would potentially have implications for the advertising and marketing of specific strains of cannabis bud and similar goods. For example, one popular sativa-dominant strain is called "Pineapple Express," which has been marketed as follows: "In terms of flavor, this strain packs a punch to your pallet with bright citrus notes infused with pineapple and earthy pine." While the cannabis itself does not actually contain any fruit, citrus, or other flavors as ingredients, the presence of certain terpenes naturally occurring in cannabis plants are used to indicate a flavor profile—for example limonine terpenes adding citrus notes, or ocimene terpenes adding notes of basil. By banning descriptors of flavor in addition to actual added flavoring, this bill would presumably prevent cannabis strains from being marketed in a way commonly associated with wine.

*Restrictions on advertisers.* In addition to expressly prohibiting cannabis licensees from manufacturing, distributing, or selling any cannabis or cannabis product that is attractive to children, the bill would prohibit an advertiser of cannabis or a cannabis products from advertising or marketing in ways that are attractive to children. While both MAUCRSA and the DCC's regulations already restrict the advertising or marketing of cannabis and cannabis products, including prohibitions against advertisements that are attractive to children, it has been historically understood that it is the licensee who is accountable for the content of any advertisement or marketing of its products, not the advertising company. Previous efforts to place requirements or restrictions on non-licensee advertisers have encountered challenges involving both First Amendment considerations and the potential applicability of Section 230 of the Communications Decency Act, a federal law that has been traditionally interpreted as providing broad immunity for internet advertisers for content posted by third parties. These issues may be raised for this bill as well as it moves through the legislative process.

**Current Related Legislation.** SB 540 (Laird) would require the DCC to reevaluate regulations for cannabis product labeling and packaging requirements on or before January 1, 2030, and every five years thereafter. *This bill is pending in the Senate Committee on Appropriations.*

**Prior Related Legislation.** SB 1097 (Pan) 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 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) 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:**

A coalition letter representing numerous representatives of "child, youth, public health, and mental health advocates, and ordinary citizens who have been affected by the evolution of the cannabis industry" also writes in support of this bill. The coalition letter states: "We have been deeply disappointed and concerned to see that the evolution of the first 5 years of legal sales has not upheld these promises. Inexplicably, regulations weakened, rather than enforced, these protections, failing to put in place systems to assess and prevent products from being attractive to children or to resemble conventional candy or food typically marketed to kids." The letter further decries "the proliferation of products known to attract youth initiation and use, such as fruit-flavored vaping products or 'blunts.' The saga of fruit flavored Juul products is familiar to all and the FDA is restricting them. California Legislators acted wisely to prohibit these flavored products for tobacco, and that decision was supported by the vast majority of voters in the referendum on Proposition 31. Robust and consistent approaches should be adopted for cannabis products, DCC took a first gentle step on flavor additives in in its 2022 guidance, but more robust action is urgently needed to protect youth."

**ARGUMENTS IN OPPOSITION:**

The **California Cannabis Manufacturers Association**, **California Cannabis Industry Association**, **Cannabis Distribution Association**, and **California NORML** write jointly in opposition to this bill, arguing: "AB 1207 will increase cost burdens on the licensed cannabis industry while empowering an unlicensed market that flagrantly markets to children. As such, it may inadvertently exacerbate public safety issues rather than improve them." The letter further states: "While we share the author's goals of protecting public health, AB 1207 will only undermine access to safe, tested cannabis products while bolstering an unlicensed cannabis market that notoriously sells and markets to children. Furthermore, proponents of this bill cite an uptick in emergency room visits and youth use but have failed to demonstrate that these incidents are associated with *legal* products. In fact, the majority of the data available indicates that these incidents are associated with illicit cannabis or intoxicating hemp products and not legal cannabis products."

**POLICY ISSUE(S) FOR CONSIDERATION:**

*Limitation on Product Advertising and Labeling.* This bill would place numerous restrictions on the advertising, marketing, packaging, and labeling of cannabis goods. The prohibitions and requirements in this bill would arguably overburden licensed cannabis businesses seeking to sell legal products to adults. For example, the bill would require all flavor names and descriptors to be in no larger than eight point font; it not clear that a smaller font size would deter accidental use by minors while making it harder for adults to understand the qualities of a particular product. Similarly, the bill would ban the depiction of fruits and vegetables, which may be overly onerous when that depiction would accurately describe flavors or ingredients in the cannabis product. The author may wish to remove or further qualify these restrictions from the bill, in addition to other narrowing amendments, to more effectively balance these interests.

*Single Dose Packaging Requirements.* This bill would prohibit edible cannabis products from containing more than one dose or serving per package. This would preempt current DCC regulations, which currently allow for multiple servings per package with clearly presented information on total dosage and serving size, as well as a requirement that those packages be resealable. Considering that the requirements in this bill would likely result in a significant increase in packaging waste without any clear indication that limiting serving sizes would reduce consumption by minors, the author may wish to strike the changes made in this section of the bill.

*Coloring Prohibitions.* For edible cannabis products that are a hard candy or gummy, this bill would prohibit the use of any natural or artificial coloring. Edible cannabis products are already prohibited from being shaped or imprinted with the shape of a human being, animal, insect, or fruit. While colors are commonly added to both cannabis and noncannabis edible products to make them more appetizing, it is not clear that this practice disproportionately increases a product's attractiveness to children. The author may wish to consider striking this requirement to provide more flexibility to the manufacturers of legal cannabis goods.

**AMENDMENTS:**

1) To allow cannabis licensees to accurately advertise, market, package, and label their products, amend the proposed (e)(1) in Section 1 of the bill to read as follows:

*(1) Use of images that are attractive to children, including, but not limited to, any of the following:*

*(A) Cartoons, toys, or robots.*

*(B) Any real or fictional humans.*

*(C) Any fictional animals, or creatures*

*(D) Fruits or vegetables, except when used to accurately describe ingredients or flavors contained in a product.*

2) To remove the bill's requirement that any flavor name or descriptor be limited to a maximum eight point font on all cannabis product packaging and labeling, strike that language in both Section 2 and Section 3 of the bill

3) To remove the bill's single dose packaging requirements, strike all of Section 4.

**REGISTERED SUPPORT:**

American Academy of Pediatrics, California
Bay Area Community Resources
Be the Influence
California Chapter of The American College of Emergency Physicians
California Society of Addiction Medicine
California State Parent Teacher Association
Charles Abbott Associates
County Health Executives Association of California
Future Leaders of America
Good Samaritan Shelter
Helpline Youth Counseling
Hermosa Coalition for Drug-Free Kids
High Truths on Drugs and Addiction
Institute for Public Strategies
Marin Healthy Youth Partnerships
Marin Residents for Public Health Cannabis Policies
Moms Strong
National Asian Pacific American Families Against Substance Abuse
Public Health Advocates
Public Health Institute
Pueblo Y Salud
Safelaunch
San Marcos Prevention Coalition
Shasta County Chemical People, INC.
Shasta Siskiyou Lassen County Citizens Against Marijuana
Stanford Reach Lab Youth Action Board
The Meadows Behavioral Health
The West Contra Costa Alcohol Policy Coalition
Wellness Retreat Recovery Center
Youth Forward

**REGISTERED OPPOSITION:**

California Cannabis Industry Association
California Cannabis Manufacturers Association
California NORML
Cannabis Distribution Association
Stiiizy
The Parent Company

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

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1244 (Holden) – As Amended April 4, 2023

**SUBJECT:** Private security services and private investigators: qualified managers.

**SUMMARY:** Requires a Private Investigator Qualified Manager and a Private Patrol Operator Qualified Manger to hold a current and valid qualified manager's certificate, which is issued through the director of the Department of Consumer Affairs (DCA), after specified requirements are satisfied by the applicant.

**EXISTING LAW:**

1) Establishes the Bureau of Security and Investigative Services (Bureau) within the DCA, which licenses and regulates the private security industry, private investigators, locksmiths, repossessors, and alarm companies. (Business and Professions Code (BPC) §§ 7512 *et seq.*)

2) Defines "qualified manager" as an individual under whose direction, control, charge, or management the business of a licensee is operated under current law. (BPC) § 7512.7 (a))

3) Prohibits a licensee from advertising or conducting business from any location other than the location reflected in records of the Bureau as their principal place of business. However, the Bureau is authorized to make exceptions in the case it received a branch office certificate for the location and the licensee complied with existing requirements and any additional requirements as the DCA's director may regulate in order to ensure public safety. Requires a licensee to notify the Bureau in writing within 30 days after closing or changing the location of a branch office. (BPC § 7535)

4) Requires the business of each licensee be operated under the active direction, control, charge, or management, in this state, of the licensee, if that individual is qualified, or the person who is qualified to act as the licensee's qualified manager, if the licensee is not qualified. (BPC § 7536 (a))

5) Prohibits a person from acting as a qualified manager of a licensee until they have complied with each of the following:

   a) Demonstrated their qualifications by a written or oral examination, or a combination of both, if required by the director.

   b) Verified to the DCA's director that they meet the qualifications of current requirements outlined.

   (BPC § 7536 (b)(1)(2))

6) Prohibits a person from acting as a qualified manager of more than five licensees. Requires the person acting as a qualified manager share equally with the licensee the responsibility and any liability for the conduct of the business of the licensee and the actions of the employees and other personnel of the licensee. Specifies this section of current statute shall not apply to any licensee that notifies the bureau in writing that the individual is not conducting any

business, but requests to maintain a current license status with the bureau. When the licensee resumes conducting business, the licensee shall so inform the bureau in writing within 30 days. (BPC § 7536 (c))

7) Clarifies any person acting as a qualified manager of a licensee shall be the holder of a qualification certificate issued by the bureau. The certificate, together with the current renewal certificate, must be predominantly displayed below the private investigator's license. (BPC § 7536 (d))

8) Requires that a suspended license or branch office certificate is subject to expiration and must be renewed, but renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended, and renewal of the branch office certificate does not entitle the licensee, while the certificate remains suspended, and until it is reinstated, to engage in the licensed activity at the location for which the certificate was issued, or to engage in any other activity or conduct in violation of the order or judgment by which the certificate was suspended. (BPC § 7559)

9) Establishes that a revoked license or branch office certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition precedent to its reinstatement, is required to pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation. (BPC § 7559.5)

10) Codifies various fees for various activities for the profession. (BPC § 7570)

11) Allows that the power and duty granted to or imposed upon the director for DCA be exercised by any other officer or employee of DCA authorized by the director, but the director shall have the supervision of and the responsibility for all powers and duties exercised by these officers and employees. (BPC § 7580.12)

12) Requires the business of each licensee be operated under the active direction, control, charge, or management, in this state, of the licensee, if they are qualified, or the person who is qualified to act as the licensee's manager, if the licensee is not qualified. Any licensee conducting business in this state whose primary office is located outside of this state is required to satisfy both of the following:

    a) Maintain an office in this state operated under the active direction, control, charge, or management of a qualified manager.

    b) Maintain at the office in this state all records required under this chapter and under rules adopted by the Bureau.

    (BPC § 7582.22 (a)(1)(2))

13) Prohibits any individual to act as a qualified manager of a licensee until he or she has complied with each of the following:

a) Demonstrated their qualifications by a written or oral examination, or a combination of both, if required by the director.

b) Made a satisfactory showing to the director that they have the required qualifications and that none of the disqualifying facts exist as to the individual.

(BPC § 7582.22 (b)(1)(2))

14) Requires that a suspended license or branch office certificate is subject to expiration and will be renewed as provided in current law, but renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended. Provides that the renewal of the branch office certificate does not entitle the licensee, while the certificate remains suspended, and until it is reinstated, to engage in the licensed activity at the location for which the certificate was issued, or to engage in any other activity or conduct in violation of the order or judgment by which the certificate was suspended. (BPC § 7586.3)

**THIS BILL:**

1) Requires a qualified manager under the Private Securities Act to hold a current and valid qualified manager's certificate issued by the director of DCA and would require the director to issue a qualified manager's certificate to an individual who meets the requirements of the Act, beginning January 1, 2025.

2) Aligns and updates specific requirements for renewing a qualified manager certificate and would require application, examination, renewal, and delinquency fees for a qualified manager certificate, which would be deposited in the Private Security Services Fund.

3) Requires branch office certificates and qualified manager certificates to be posted in a specified manner.

4) Enacts conforming and necessary non-substantive changes in order for the BSIS to ensure its responsibility to protect consumers and take appropriate disciplinary actions its ability to purposes of consumer safety and protection.

**FISCAL EFFECT:** Unknown. This bill has been keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the author. According to the author: "AB 1244 is a bill that is needed to ensure that qualified managers in the private security services and private investigator profession are held accountable should a violation occur after the required training. The ultimate goal is to ensure that the public is safe and that bad actors cannot simply move from company to company without being held accountable."

**Background.**

*Overview of the Bureau.* According to the Bureau's 2018 sunset review background paper, various categories relating to private security services that fall within the Bureau's jurisdiction and oversight can be traced as far back as the 19th century. The background paper points out that

a variety of critical activities and responsibilities typically associated and assigned to state and federal law enforcement's responsibilities were, in fact, performed and outsourced to private citizens. The number of private citizens engaged in public safety activities continued to grow and expand, which led to requiring a standard of regulation for all individuals involved in providing private security services, detective work, and serving as protection for businesses. As a result, in 1915, California established regulation and provided oversight of the private security industry through the creation of the Detective Licensing Board under the State Board of Prison Directors. Both entities were tasked with the licensure and regulation of private detectives. The Detective Licensing Board was later renamed the Detective Licensing Bureau and its statutes are today recognized as the Private Investigator Act.

In 1955, the Detective Licensing Bureau became the Bureau of Private Investigators and Adjustors. In 1970, it was combined with the Collection Agency Licensing Bureau and renamed the Bureau of Collection and Investigative Services. In 1993, legislation was enacted to formally change the name of the Bureau to what is the current name: the Bureau of Security and Investigative Services. The Bureau issues licenses, registrations, certificates, and permits; however, for the purpose of this discussion, the terms "license" and "licensee" will be used. The Bureau regulates the following Acts: (1) Alarm Company Act, (2) Locksmith Act, (3) Private Investigator Act, (4) Private Security Services Act, (5) Proprietary Security Services Act, and the Collateral Recovery Act.

*Qualified Managers.* The Bureau has received and identified concerning reports of nefarious activities involving multiple companies due to a single qualified manager's behavior. The Bureau is concerned with documented reports of a qualified manager engaging in unprofessional conduct, yet the qualified manager is able to repeatedly avoid disciplinary actions by moving from one company to another company without consequences. Through its administrative process, the Bureau has the authority to discipline the company. However, the Bureau does not interpret current law as authorization for it to discipline a qualified manager individually. As a result, the individual directly responsible for unprofessional conduct that led to formal discipline of the company is allowed to move to another company without a record of the qualified manager's prior.

In order for the Bureau to provide accountability within the important industry it is tasked to regulate, license, and oversee, this legislation would enact conforming changes that capture the Private Investigator Qualified Manager and the Private Patrol Operator Qualified Manger designations as actual license types, which clearly allows BSIS clear authority concerning the renewal and discipline of a qualified manager. Currently, qualified manager certification are lifetime designations and not subject to renewal nor individual discipline. These changes will align them with all other qualified manager license types that the Bureau oversees by making them renewable two year licenses and subject to disciplinary oversight. This bill also adds provisions increasing the number and type of qualifying hours needed to obtain a Private Patrol Operator license.

**Prior Related Legislation.** *AB 2515 (Holden, Chapter 287, Statutes of 2022)* revised requirements for obtaining a baton permit and carrying a baton, and requires a person registered as a proprietary private security employer to deliver a written report to the DCA describing the circumstances surrounding any physical altercation with a member of the public by a registered proprietary private security officer while on duty and while acting within the course and scope of their employment within 7 business days after the qualifying incident.

*AB 229 (Holden, Chapter 697, Statutes of 2021)* prohibited a person required to be registered as a security guard from carrying or using a firearm or baton unless the security guard is an employee of a private patrol operator, licensee or an employee of the state or a political subdivision of the state, and would require the course in the carrying and the use of firearms to include training in the appropriate use of force.

*SB 609 (Glazer, Chapter 377, Statutes of 2019)* made various changes to the operations of the Bureau of Security and Investigative Services (BSIS), including prohibiting BSIS from issuing firearms permits to applicants under 21 years of age, consolidating the Private Investigator (PI) Fund and the Private Security Services (PSS) Fund, increasing certain fees within the PI Act, and ensuring Legislative review of BSIS by January 1, 2024.

*SB 1196 (Hill, Chapter 800, Statutes of 2016)* prior sunset extension legislation for the BSIS as well as other entities under the Department of Consumer Affairs and made various changes to provisions in the Alarm Company Act, Locksmith Act, Private Investigator Act, Private Security Services Act, Proprietary Security Services Act, and Collateral Recovery Act.

*AB 3291 (McPherson, Chapter 1285, Statutes of 1994)* established the new Private Investigators Act and the Private Security Services Act, which contained all provisions of the former Private Investigator Act. This measure also defined "advertisement" in statute relative to private investigator services and security services. Finally, the measure provided legislative intent that this bill is a reorganization and restatement of existing law allowing for a continuation of existing law without substantive change.

**ARGUMENTS IN SUPPORT:**

This bill is supported by the **California Association of Licensed Security Agencies (CALSAGA)**. According to CALSAGA, "[this bill] sets forth reasonable standards for a qualified manager, based on qualifications determined via exam, and requires two years of experience as a patrolperson, guard, or watchman and one year of experience in and administrative position with a licensed and current private patrol operator. We believe these additional requirements further enhance public safety by ensuring those who oversee private patrol operators are qualified, experienced and understand the responsibility that comes with supervising licensees."

**ARGUMENTS IN OPPOSITION:**

None on file.

**POLICY ISSUE(S) FOR CONSIDERATION:**

It could be argued that this bill could potentially impose an overlapping, second qualified manager license on a large majority of licensed professionals who already are their own qualified managers. Specifically, concerns have been raised about the possible duplicative nature this bill would create. As this bill continues to move through the legislative process, the author may wish to consider the extent of the necessity for this bill and whether existing law already establishes the responsibility and liability of qualified managers, and whether there evidence of significant consumer harm or substantial problems with existing law.

**REGISTERED SUPPORT:**

California Association of Licensed Security Agencies (CALSAGA)

**REGISTERED OPPOSITION:**

None on file.

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

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1286 (Haney) – As Introduced February 16, 2023

**SUBJECT:** Pharmacy.

**SUMMARY:** Authorizes a pharmacist-in-charge to make staffing decisions in a pharmacy and to close a pharmacy if workplace hazards may create an unsafe environment; requires a community pharmacy to be staffed at all times with at least one clerk or pharmacy technician fully dedicated to performing pharmacy-related services; authorizes pharmacy technicians with specified training to perform additional tasks, including administering vaccines and epinephrine, performing specimen collection for laboratory tests, and receiving verbal prescriptions; requires community pharmacies to report medication errors; and requires consulting pharmacists to complete a Surgical Clinic Self-Assessment Form every other year, among other provisions.

**EXISTING LAW:**

1) Establishes the Pharmacy Law. (Business and Professions Code (BPC) §§ 4000 *et seq.*)

2) Establishes the California State Board of Pharmacy (BOP) to administer and enforce the Pharmacy Law, comprised of seven pharmacists and six public members. (BPC § 4002)

3) Provides that protection of the public shall be the highest priority for the BOP in exercising its licensing, regulatory, and disciplinary functions. (BPC § 4001.1)

4) Authorizes the Board to adopt rules and regulations as may be necessary for the protection of the public. (BPC § 4005)

5) Defines "pharmacy" as an area, place, or premises licensed by the BOP in which the profession of pharmacy is practiced and where prescriptions are compounded. (BPC § 4037)

6) Defines "pharmacy technician" as an individual who assists a pharmacist in a pharmacy in the performance of their pharmacy-related duties. (BPC § 4038)

7) Declares pharmacy practice to be "a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use, drug-related therapy, and communication for clinical and consultative purposes" and that "pharmacy practice is continually evolving to include more sophisticated and comprehensive patient care activities." (BPC § 4050)

8) Defines "pharmacist" as a natural person to whom a license has been issued by the BOP which is required for any person to manufacture, compound, furnish, sell, or dispense a dangerous drug or dangerous device, or to dispense or compound a prescription. (BPC § 4036; BPC § 4051)

9) Authorizes a pharmacist to do all of the following, among other permissible activities, as part of their scope of practice:

a) Provide consultation, training, and education to patients about drug therapy, disease management, and disease prevention.

b) Provide professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals, and participate in multidisciplinary review of patient progress, including appropriate access to medical records.

c) Order and interpret tests for the purpose of monitoring and managing the efficacy and toxicity of drug therapies in coordination with the patient's provider or prescriber.

d) Administer immunizations pursuant to a protocol with a prescriber.

e) Furnish emergency contraception drug therapy, self-administered hormonal contraceptives, HIV preexposure and postexposure prophylaxis, and nicotine replacement products, subject to specified requirements.

f) Administer drugs and biological products that have been ordered by a prescriber.

(BPC § 4052)

1) Authorizes a pharmacist to furnish an approved opioid antagonist in accordance with standardized procedures or protocols developed and approved by the BOP and the Medical Board of California, in consultation with stakeholders. (BPC § 4052.01)

2) Authorizes a pharmacist to perform skin puncture in the course of performing routine patient assessment procedures. (BPC § 4052.4)

3) Authorizes a pharmacist to independently initiate and administer any vaccine that has been approved or authorized by the federal Food and Drug Administration and received a federal Advisory Committee on Immunization Practices individual vaccine recommendation published by the federal Centers for Disease Control and Prevention for persons three years of age and older. (BPC § 4052.8)

4) Requires each pharmacy to designate a pharmacist-in-charge, subject to approval by the BOP, who is responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy. (BPC § 4113)

5) Prohibits a community pharmacy from requiring a pharmacist employee to engage in the practice of pharmacy at any time the pharmacy is open to the public, unless either another employee of the pharmacy or, if the pharmacy is located within another establishment, an employee of the establishment within which the pharmacy is located, is made available to assist the pharmacist at all times. (BPC § 4113.5)

6) Authorizes a pharmacy technician to perform packaging, manipulative, repetitive, or other nondiscretionary tasks only while assisting, and while under the direct supervision and control of, a pharmacist; holds the pharmacist responsible for the duties performed under his or her supervision by a technician. (BPC § 4115(a))

7) Limits a pharmacy with only one pharmacist to no more than one pharmacy technician, and states that the total ratio of pharmacy technicians to any additional pharmacist shall not exceed 2:1. (BPC § 4115(f))

8) Requires every pharmacy to establish a quality assurance program that shall, at a minimum, document medication errors attributable, in whole or in part, to the pharmacy or its personnel. (BPC § 4125)

9) Requires clinics to retain a consulting pharmacist to approve policies and procedures and to certify in writing quarterly that the clinic is, or is not, operating in compliance with the requirements of the Pharmacy Law. (BPC § 4192)

10) Authorizes a pharmacist to seek recognition as an advanced practice pharmacist if they meet certain education and training requirements. (BPC § 4210)

11) Provides that the BOP shall take action against any licensee who is guilty of unprofessional conduct, with various specific examples provided. (BPC § 4301)

12) Subjects a licensed pharmacist to formal discipline for unprofessional conduct that includes acts or omissions that involve the following:

    a) Inappropriate exercise of their education, training, or experience as a pharmacist.

    b) The failure to exercise or implement their best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or the provision of services.

    c) The failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

    d) The failure to fully maintain and retain appropriate patient-specific information pertaining to the performance of any pharmacy function.

    (BPC § 4306.5)

**THIS BILL:**

1) Provides that the pharmacist-in-charge may make staffing decisions to ensure sufficient personnel are present in the pharmacy to prevent fatigue, distraction, or other conditions that may interfere with a pharmacist's ability to practice competently and safely.

2) Allows the pharmacist on duty to adjust staffing according to workload if needed and if the pharmacist-in-charge is not available.

3) Authorizes the pharmacist-in-charge to close a pharmacy if workplace hazards, such as unsanitary conditions, temperatures that deviate from appropriate drug storage conditions, or other conditions that, based on their professional judgment, may create an unsafe environment for personnel or pharmacy staff.

4) Allows the pharmacist on duty to close the pharmacy for the above reasons if the pharmacist-in-charge is not available.

5) Authorizes the pharmacist on duty to close a pharmacy if, in their opinion, the staffing at the pharmacy is inadequate to safely fill or dispense prescriptions or provide other patient care services in a safe manner without fear of retaliation.

6) Requires a community pharmacy to be staffed at all times with at least one clerk or pharmacy technician fully dedicated to performing pharmacy-related services.

7) Requires scheduled closures for lunch time for all pharmacy staff to be established and publicly posted and included on the outgoing telephone message where staffing of pharmacist hours does not overlap sufficiently.

8) Requires a community pharmacy to report all medication errors to an entity approved by the BOP, no later than 14 days following the date of discovery of the error, and to maintain records demonstrating compliance with this requirement for three years and to make these records immediately available at the request of an inspector.

9) Exempts medication error reports from the California Public Records Act.

10) Prohibits the BOP from taking disciplinary action solely based on a medication error report, unless it receives other information regarding the medication error.

11) Defines "community pharmacy" as including any pharmacy that dispenses medication to an outpatient.

12) Authorizes a pharmacy technician to administer vaccines, administer epinephrine, perform specimen collection for tests that are classified as waived under CLIA, receive verbal prescriptions, receive prescription transfers, and accept clarification on prescriptions under the following conditions:

    a) The pharmacist-in-charge of the pharmacy at which the tasks are being performed has deemed the pharmacy technician competent to perform such tasks and documented such determination in writing.

    b) The pharmacy has scheduled another pharmacy technician to assist the pharmacist by performing the tasks.

    c) The pharmacy technician is certified by a program accredited by the National Commission for Certifying Agencies that is approved by the BOP.

    d) The pharmacy technician has successfully completed at least six hours of practical training approved by the Accreditation Council for Pharmacy Education and includes hands-on injection technique, the recognition and treatment of emergency reactions to vaccines, and an assessment of the pharmacy technician's injection technique.

13) Provides that a pharmacy with only one pharmacist shall have no more than one pharmacy technician performing the above additional tasks, but that a second pharmacy technician is then available to perform standard tasks, notwithstanding the Pharmacy Law's 1:1 ratio.

14) Requires the consulting pharmacist at a clinic to complete a Surgical Clinic Self-Assessment Form before July 1 of every odd-numbered year, as determined by the BOP, as a means to promote compliance through self-examination and education.

15) Requires the consulting pharmacist at a clinic to certify compliance with quarterly inspection requirements and provide the most recently completed self-assessment form as part of their renewal process.

16) Adds the following actions or conduct to acts that constitute unprofessional conduct by licensees, subject to discipline by the BOP:

    a) Actions or conduct that would subvert or tend to subvert the efforts of a pharmacist to comply with laws and regulations, or exercise professional judgment, including creating or allowing conditions that may interfere with a pharmacist's ability to practice with competency and safety or creating or allowing an environment that may jeopardize patient care.

    b) Actions or conduct that would subvert or tend to subvert the efforts of a pharmacist-in-charge to comply with laws and regulations, exercise professional judgment, or make determinations about adequate staffing levels to safely fill prescriptions of the pharmacy or provide other patient care services in a safe and competent manner.

    c) Actions or conduct that would subvert or tend to subvert the efforts of a pharmacist intern or and pharmacy technician to comply with laws or regulations.

    d) Establishing policies and procedures related to time guarantees to fill prescriptions within a specified time unless those guarantees are required by law or to meet contractual requirements.

17) Authorizes the BOP to assess administrative fines and issue orders of abatement to any unlicensed entity who engages in any action that requires licensure under the jurisdiction of the BOP, not to exceed $5,000 for each occurrence pursuant to a citation issued by the BOP.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the **California State Board of Pharmacy**. According to the author:

> "Community chain pharmacies and the pharmacists who work for them are instrumental in delivering care to Californians. However, recent news reports have highlighted alarming medication errors in this setting—including errors that have led to death. The root cause of medication errors in the community chain setting can be tied to pharmacy working conditions, like insufficient staffing, unsanitary conditions, or lack of autonomy to make clinical decisions in the best interest of the patient. Unfortunately, there is no requirement under current law for pharmacies to track medication errors or to consider the pharmacy working conditions that lead to medication errors. To address the root cause of medication errors and major faults in Pharmacy Law, AB 1286 will establish a first in the nation mandatory reporting of medication errors to allow for robust evaluation of the causes of medication errors. It also gives licensed pharmacy staff autonomy over their working conditions so they can provide better patient care and services for Californians."

**Background.**

*Pharmacist-in-Charge Authority*. Under the Pharmacy Law, pharmacists licensed by the BOP can be directly employed by the corporate owners of retailers and other community pharmacies. This has remained the case despite increasing recognition of their professional training and authority to exercise a meaningful degree of clinical judgement, which has resulted in numerous scope expansions for the profession. However, each pharmacy must designate a "pharmacist-in-charge," subject to approval by the BOP. This pharmacist-in-charge is responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

This bill would expand the autonomy of the pharmacist-in-charge to make certain staffing and pharmacy operations decisions that the pharmacist-in-charge believes to be in the best interest of personnel and patients. First, the bill would authorize the pharmacist-in-charge to make staffing decisions to ensure sufficient personnel are present in the pharmacy to prevent fatigue, distraction, or other conditions that may interfere with a pharmacist's ability to practice competently and safely. This authority would be delegated to the pharmacist on duty if the pharmacist-in-charge is not available.

Second, this bill would authorize the pharmacist-in-charge to close the pharmacy under certain conditions, including in circumstances where workplace hazards, such as unsanitary conditions, temperatures that deviate from appropriate drug storage conditions, or other conditions that, based on the pharmacist's professional judgment, may create an unsafe environment for personnel or pharmacy staff. This authority would also be delegated to the pharmacist on duty if the pharmacist-in-charge is not available. The pharmacist on duty would additionally be allowed to close a community pharmacy if, in their opinion, the staffing at the pharmacy is inadequate to safely fill or dispense prescriptions or provide other patient care services in a safe manner without fear of retaliation.

*Pharmacy Staffing*. Pharmacists working in community pharmacies, particularly those co-located with other retail and grocery stores, have historically complained that it is common for a pharmacist to be the only employee assigned to the pharmacy area. According to previously conducted surveys, 83% of pharmacists report being left alone during the workday for an average period of four hours. Within this population, the survey indicated that a high percentage of pharmacists stated that they do not have enough time to fulfill their professional functions to the extent that they believed necessary. These pharmacists have argued that instead of providing their core pharmacy services, much of their time is instead spent performing clerical tasks and performing non-pharmacy activities on behalf of the business.

Statute authorizes an unlicensed employee to provide purely clerical assistance to a pharmacist, and for a pharmacy technician licensed by the BOP to assist a pharmacist with a number of more sensitive pharmacy service activities. The Pharmacy Law imposes a strict cap on the number of pharmacy technicians who may be assigned to assist a pharmacist; a single pharmacist may be assisted by no more than a single pharmacy technician. Many community pharmacy owners believe that this restrictive law, referred to as the "pharmacist/pharmacy technician ratio," frequently results in inadequate staff support for pharmacists and an inability for some community pharmacies to adequately meet the demands of their patients. Several efforts to increase this ratio over the years have failed to pass.

In 2018, SB 1442 (Wiener) was enacted to prohibit community pharmacies from requiring a pharmacist employee to engage in the practice of pharmacy at any time the pharmacy is open to the public, unless either another employee of the pharmacy or, if the pharmacy is located within another establishment, an employee of the establishment within which the pharmacy is located, is made available to assist the pharmacist at all times. An exception was included for situations where another employee is unavailable to assist the pharmacist due to reasonably unanticipated circumstances, and the pharmacy takes all reasonable action to make another employee available to assist the pharmacist.

Representatives of pharmacists who work in community pharmacies have complained that the 2018 legislation has not been effectively implemented due to deficiencies in the law. These organizations report that pharmacists are often still left alone without support staff in many cases where additional staff is needed. This bill would seek to rectify this issue by expressly requiring that a community pharmacy be staffed at all times with at least one clerk or pharmacy technician fully dedicated to performing pharmacy-related services. The bill would additionally provide that where staffing of pharmacist hours does not overlap sufficiently, scheduled closures for lunch time for all pharmacy staff shall be established and publicly posted and included on the outgoing telephone message.

*Pharmacy Technician Scope.* Over the past several years, the BOP has voted to support the development of a legislative proposal to create a new mid-level practitioner in pharmacy settings. This proposed "advanced pharmacy technician" would be authorized to carry out certain duties that pose a relatively low risk of patient harm but may currently only be performed by pharmacists, allowing a pharmacist to spend more time engaged in patient care. While the BOP has formally pursued legislation to establish a new license category for advanced pharmacy technicians and enable these mid-level practitioners to serve in pharmacies, no legislative attempt has been successful to date.

During the COVID-19 pandemic, the Governor signed an executive order that created a new process for boards and the public to request waivers of requirements related to healing arts professional licensing through the Department of Consumer Affairs (DCA). Through this waiver process, the DCA issued multiple waivers of law to authorize various healing arts licensees to order and administer the COVID-19 vaccine. These waivers have extended to pharmacy technicians, as well as pharmacists and other healing arts professionals, consistent with the federal Public Readiness and Emergency Preparedness (PREP) Act. On August 4, 2021, the federal Health and Human Services Agency issued an amendment to the Public Readiness and Emergency Preparedness (PREP) Act to extend coverage to pharmacy technicians with proper training to administer seasonal flu vaccines to adults in addition to the COVID-19 vaccine.

This bill would authorize pharmacy technicians to administer vaccines, administer epinephrine, perform specimen collection for CLIA-waived tests, receive verbal prescriptions and prescription transfers, and accept clarification on prescriptions. The pharmacist-in-charge must first deem the pharmacy technician competent to perform those tasks and documented that determination in writing. The pharmacy technicians would also be required to complete at least six hours of practical training approved by the Accreditation Council for Pharmacy Education and includes hands-on injection technique, the recognition and treatment of emergency reactions to vaccines, and an assessment of the pharmacy technician's injection technique. A pharmacy technician who qualifies to perform the additional tasks would then not count in the Pharmacy Law's 1:1 ratio, and another pharmacy technician would be required to assist with other tasks.

*Surgical Clinic Self-Assessment Forms.* The Pharmacy Law requires certain clinics, including surgical clinics, accredited outpatient settings, and certified ambulatory surgical centers to obtain a license from the BOP. These clinics are required to retain a consulting pharmacist to approve the clinic's policies and procedures in conjunction with the professional director and the administrator. In addition, the consulting pharmacist is required to visit the clinic regularly and at least quarterly. The consulting pharmacist is then required to certify in writing quarterly that the clinic is, or is not, operating in compliance with the requirements of the Pharmacy Law. Each completed written certification shall be kept on file in the clinic for three years and shall include recommended corrective actions, if appropriate.

This bill would additionally require each consulting pharmacist for a clinic to complete a Surgical Clinic Self-Assessment Form, as determined by the BOP, as a means to promote compliance through self-examination and education. The self-assessment is intended to assess the clinic's compliance with current laws and regulations and include information on compounding practices as specified on the most recent version of the Surgical Clinic Self-Assessment Form approved by the BOP and posted on its website. The professional director of the clinic and consulting pharmacist would be required to certify that they have read, reviewed, and completed self-assessment to the best of their professional ability and acknowledge that failure to correct any deficiency identified could result in action by the board. The completed form would then be signed under penalty of perjury, kept on file in the clinic for three years, and made available to the BOP or its designee, upon request. This process would be required before July 1 on each odd-numbered year and would be incorporated into the consulting pharmacist's renewal process, along with certification of compliance with quarterly inspection requirements.

*Medication Errors.* The BOP has listed medication error as the number one violation resulting in a citation in nearly every year within the last several years. According to the *Journal of the American Medical Association*, 46 percent of adults cannot understand the information listed on their prescription drug labels. Furthermore, the Institute of Medicine of the National Academies indicates that medication errors are among the most common medical errors, harming at least 1.5 million people annually.

This bill would seek to improve the state's understanding of the causes of medication errors by requiring community pharmacies to report all medication errors to an entity approved by the BOP. A community pharmacy would be required to submit the report no later than 14 days following the date of discovery of the error. Reports would be deemed confidential and not subject to discovery, subpoena, or disclosure pursuant to the California Public Records Act. The BOP would not be allowed to subject a community pharmacy to discipline or other enforcement action based solely on the report; however, if the BOP receives other information regarding the medication error, that information may serve as basis for discipline or other enforcement by the BOP.

*Unprofessional Conduct.* The BOP's Enforcement Unit regularly engages in investigations of licensees that may result in disciplinary action, as well as cases involving unlicensed activity. Over 12,100 investigations were completed from FY 2015/16 through FY 2018/19, with 1,335 referrals for formal discipline resulting in the revocation or surrender of 854 licenses and 462 licenses placed on probation. In addition, the BOP issued a total of 7,223 citations. On average, the BOP receives around 3,500 complaints per year. These complaints are then categorized into priorities based on the potential risk to public health and safety.

The Pharmacy Law requires the BOP to take action against any licensee who is guilty of unprofessional conduct. Statute provides that unprofessional conduct includes various specified acts and omissions, including incompetence, gross negligence, inappropriate furnishing of controlled substances, and other violations of law. Existing law specifies that engaging in any conduct that subverts or attempts to subvert an investigation of the BOP is unprofessional conduct.

This bill would further add to the list of what constitutes unprofessional conduct. Specifically, the bill would expressly include the following actions or conduct as examples of unprofessional conduct:

1. Actions or conduct that would subvert or tend to subvert the efforts of a pharmacist to comply with laws and regulations, or exercise professional judgment, including creating or allowing conditions that may interfere with a pharmacist's ability to practice with competency and safety or creating or allowing an environment that may jeopardize patient care.

2. Actions or conduct that would subvert or tend to subvert the efforts of a pharmacist-in-charge to comply with laws and regulations, exercise professional judgment, or make determinations about adequate staffing levels to safely fill prescriptions of the pharmacy or provide other patient care services in a safe and competent manner.

3. Actions or conduct that would subvert or tend to subvert the efforts of a pharmacist intern or and pharmacy technician to comply with laws or regulations.

4. Establishing policies and procedures related to time guarantees to fill prescriptions within a specified time unless those guarantees are required by law or to meet contractual requirements.

**Current Related Legislation.** AB 1341 (Berman) would authorizes pharmacists to continue furnishing COVID-19 oral therapeutics to patients who test positive for SARS-CoV-2, without a prior prescription, until January 1, 2025.

SB 524 (Caballero) would authorize a pharmacist to furnish prescription medications that are furnished pursuant to the result from a test performed by the pharmacist that is used to guide diagnosis or clinical decisionmaking. *This bill is pending referral in the Senate Committee on Business, Professions, and Economic Development.*

**Prior Related Legislation.** AB 1533 (Committee on Business and Professions, Chapter 629, Statutes of 2021) extended the sunset date for the BOP until January 1, 2026 and made additional technical changes, statutory improvements, and policy reforms in response to issues raised during the BOP's sunset review oversight process.

AB 1064 (Fong, Chapter 655, Statutes of 2021) expanded the authority of a pharmacist to initiate and administer immunizations to include any vaccine approved or authorized by the FDA for persons 3 years of age and older.

SB 362 (Newman, Chapter 334, Statutes of 2021) prohibited a community pharmacy from establishing quotas to numerically measure or evaluate a pharmacist or pharmacy technician's performance of duties requiring a license.

SB 1442 (Wiener, Chapter 569, Statutes of 2018) prohibited a community pharmacy from requiring a pharmacist employee to engage in the practice of pharmacy at any time the pharmacy is open to the public, unless another employee is made available to assist the pharmacist at all times.

**ARGUMENTS IN SUPPORT:**

The **California State Board of Pharmacy** (BOP) is sponsor of this bill. The BOP writes: "Assembly Bill 1286 is a culmination of a yearlong effort undertaken by an ad hoc committee specifically focused on evaluating medication errors, working conditions, and the intersection of the two. This committee was formed after the Board considered survey results from its own workforce survey that included some startling findings including 83% of pharmacists working in community chain pharmacies indicated they do not believe they have sufficient time to provide appropriate patient consultation, while 32% of pharmacists working in community independent pharmacies indicated same. As part of the Committee's process, members heard from experts in the field, learned about authorities in other jurisdictions, and gained an understanding about findings and activities under way at the national level. It is incumbent upon the Board to act now on these findings to promote patient care."

The **United Food and Commercial Workers Western States Council** (UFCW) supports this bill. According to UFCW: "The Board charged by law with protecting patients who need prescription medicines to stay alive, heal, and reduce suffering is telling this Legislature Californians are broadly and deeply at-risk of death and needless anguish. The cause? Nothing more than publicly traded chain pharmacies placing short-term profits over the lives of California families. This bill is one of the most important public health bills pending this year. It is based on careful study, is proportional, and, according to the expert regulator, urgently needed."

**ARGUMENTS IN OPPOSITION:**

The **California Community Pharmacy Coalition** (CCPC), a project of the California Retailers Association, opposes this bill. In regards to the bill's minimum staffing requirements, the CPPC writes: "Although CCPC acknowledges the benefits of having additional non-pharmacist staff in the pharmacy, there are often unforeseen circumstances, out of the pharmacy's control, that make this impossible. For example, if there is only one technician working in the pharmacy and that technician calls in sick or is unable to make it to work on any given day, the pharmacy would have to close. We believe this is antithetical to the Board's role of consumer protection because pharmacy closures will result in reduced access to critical medications for consumers." In regards to the bill's provisions authorizing a pharmacist-in-charge to close a pharmacy, the CPPC argues: "The bill, if passed, will result in unplanned and last minute pharmacy closures across the state, which will be hugely detrimental to Californians who rely on their community pharmacies for medications, testing, vaccines and other critical healthcare services. What if the pharmacy is located in a rural area and is the only place where a patient can access an emergency medication? If that pharmacy closes, that patient will be forced to go without their medication and potentially rely on the Emergency Department for care, which will cause a significant financial strain on our healthcare system."

**POLICY ISSUE(S) FOR CONSIDERATION:**

*Pharmacy Closures.* This bill would authorize a pharmacist-in-charge or pharmacist on duty to close a pharmacy if workplace hazards "may create an unsafe environment for personnel or pharmacy staff" based on the pharmacist's professional judgment. The bill provides "unsanitary conditions" and "temperatures that deviate from appropriate drug storage conditions" as examples of such hazards. While there is a compelling interest in ensuring that pharmacists-in-charge have the authority to act in the best interest of pharmacy staff and patients, this language is arguably overbroad and could capture conditions that technically qualify as "workplace hazards" but do not reach a level of urgency that justifies full closure of a pharmacy, which would potentially delay care to patients and restrict access to medication. The author may wish to provide greater clarification as to what constitutes a workplace hazard for purposes of the bill.

*Staffing Minimums.* This bill would amend legislation enacted in 2018 through the passage of SB 1442 (Wiener), which required community pharmacies to make another employee available to assist the pharmacist at all times. The author and supporters of this bill that this requirement has not alleviated staffing issues, this bill would require a minimum of one pharmacy technician or clerk to be present at the pharmacy at all times. However, it is not clear whether the exception included in SB 1442 for situations where another employee is unavailable to assist the pharmacist due to reasonably unanticipated circumstances. The author may wish to clarify that the exception for unanticipated circumstances and emergencies would still apply to this new minimum staffing requirement. The author may also wish to authorize the pharmacist on duty to waive this requirement in circumstances where additional staff is not needed based on workload.

*Pharmacy Technician Scope Expansion.* This bill would authorize pharmacy technicians with specified training to engage in additional acts beyond their normal scope. Specifically, the bill would allow trained pharmacy technicians to administer vaccines, administer epinephrine, perform specimen collection for tests that are classified as waived under CLIA, receive verbal prescriptions, receive prescription transfers, and accept clarification on prescriptions. Concerns have been raised that receiving verbal prescriptions does require a degree of professional judgment, considering many medications sound similar; the author may wish to consider whether including this task is appropriate for non-pharmacists. Additionally, while administering flu and COVID-19 vaccines fulfills an important public health need and pharmacy technicians were previously given emergency authorization to administer these vaccines, other vaccines may not be appropriate to include in the pharmacy technician's expanded scope. Therefore, the author may wish to consider narrowing the bill to only include these two vaccines.

**AMENDMENTS:**

1) To add parameters to what constitutes cause for a pharmacist-in-charge to close a pharmacy, the proposed subdivision (d) in Section 1 of the bill should be amended to read as follows:

   *(d) The pharmacist-in-charge may close a pharmacy under conditions that, based on the pharmacist-in-charge's professional judgment, present an immediate risk to the health and safety of patients, personnel, or pharmacy staff. If the pharmacist-in-charge is not available, the pharmacist on duty may close the pharmacy for the reasons described in this subdivision. The pharmacist-in-charge or pharmacist on duty shall reopen the pharmacy as soon as reasonably possible upon the abatement of the condition or conditions that presented an immediate risk to the health and safety of patients. The conditions described by this subdivision may include, but are not limited to, any of the following:*

*(1) Workplace safety and health hazards, including those contained in Division 5 of the Labor Code.*

*(2) Temperatures that deviate from appropriate drug storage conditions.*

*(3) Other conditions that present an immediate risk to the health and safety of patients, personnel, or pharmacy staff.*

2) To ensure that the minimum staffing requirements added by the bill allow for exceptions when there are reasonably unanticipated circumstances or when the pharmacist on duty believes that workload needs do not necessitate support staff, add the following paragraph to the proposed subdivision (f) in Section 3 of the bill:

*(3) The board shall not take action against a pharmacy for a violation of paragraph (1) if the conditions of subdivision (d) apply or if the pharmacist on duty waives the requirement in writing during specified hours based on workload needs.*

3) To narrow the provisions of the bill that would authorize pharmacy technicians with specified training to engage in additional acts, amend the proposed subdivision (b) in Section 4 of the bill to specify that a pharmacy technician may only administer influenza and COVID-19 vaccines, and strike reference in that subdivision to receiving verbal prescriptions.

**REGISTERED SUPPORT:**

California State Board of Pharmacy *(Sponsor)*
United Food and Commercial Workers Western States Council

**REGISTERED OPPOSITION:**

California Community Pharmacy Coalition

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

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1399 (Friedman) – As Amended March 16, 2023

**SUBJECT:** Veterinary medicine: veterinarian-client-patient relationship and veterinary telemedicine.

**SUMMARY:** Expands the authority of a licensed veterinarian to establish a veterinarian-client-patient relationship and practice veterinary medicine through the use of telehealth.

**EXISTING LAW:**

1) Enacts the Veterinary Medicine Practice Act, outlining the licensure requirements, scope of practice, and responsibilities of individuals practicing veterinary medicine in California. (Business and Professions Code (BPC) §§ 4811 *et seq.*)

2) Establishes the Veterinary Medical Board (Board) under the jurisdiction of the Department of Consumer Affairs, responsible for enforcing the provisions of the Veterinary Medicine Practice Act, and regulating veterinarians, registered veterinary technicians, veterinary assistant substance controlled permit holders, and veterinary premises. (BPC § 4800)

3) Provides that protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. (BPC § 4800.1)

4) Declares that it is unlawful to practice veterinary medicine in California unless a person holds a valid, unexpired, and unrevoked license issued by the Board, with certain exceptions. (BPC § 4825)

5) Defines "diagnosis" as the act or process of identifying or determining the health status of an animal through examination and the opinion derived from that examination. (BPC § 4825.1)

6) Defines the practice of veterinary medicine, surgery, and dentistry when a person engages in various acts, including representing themselves as a veterinarian; diagnosing or prescribing a drug, medicine, appliance, application, or treatment; performing a surgical or dental operation or manual procedure for diagnosis; or collecting blood. (BPC § 4826)

7) Requires a veterinarian who initially prescribes, dispenses, or furnishes a dangerous drug to an animal patient in an outpatient setting to offer a consultation containing specified information about that dangerous drug and its use. (BPC § 4829.5)

8) Outlines the requirements for obtaining a veterinarian license, which includes passing three examinations: a licensing examination that is administered on a national basis; a California state board examination; and an examination on California statutes and regulations of the Veterinary Medicine Practice Act. (BPC § 4848)

9) Requires all premises where veterinary medicine, dentistry and surgery is practiced to be registered with the Board; defines "premises" to include a building, kennel, mobile unit, or vehicle, and specifies that every registration of veterinary premises must include the name of the responsible licensee manager for the licensed premises. (BPC § 4853)

10) Authorizes the Board to withhold, suspend or revoke the registration of veterinary premises when the licensee manager listed on the application ceases to become responsible for management of the registered premises and is not subsequently replaced, or the licensee manager has had their license revoked or suspended. (BPC § 4853.6)

11) Prohibits a veterinarian from disclosing any information concerning an animal receiving veterinary services, the client responsible for the animal receiving veterinary services, or the veterinary care provided to an animal, except under specified circumstances. (BPC § 4857)

12) Specifies a list of prohibited activities for individuals licensed under the Board, such as fraud, misleading advertising, and cruelty to animals; provides that the Board may deny, revoke, or suspend a license or registration, or assess a fine, if any a person under its jurisdiction is found to have engaged in prohibited activities. (BPC Section §§ 4883 *et seq.*)

13) Authorizes healing arts licensees to provide services via telehealth in compliance with certain standardized requirements and definitions, their professional practice act, and the regulations adopted by their regulatory board pursuant to that practice act. (BPC § 686)

14) Requires a veterinarian to order any medically important antimicrobial drug they administer through a prescription or veterinary feed directive, pursuant to a veterinarian-client-patient relationship. (Food and Agricultural Code § 14401)

**THIS BILL:**

1) Prohibits a person from practicing veterinary medicine outside the context of a veterinarian-client-patient relationship, except to provide advice in an emergency.

2) Defines "veterinarian-client-patient relationship" as a relationship in which all of the following conditions are met:

    a) The veterinarian and client agree to the veterinarian assuming responsibility for making medical judgments regarding the health of the animal patient;

    b) The veterinarian has sufficient knowledge of the animal patient to initiate at least a general or preliminary diagnosis of the medical condition of the animal through a recent observation and examination, either in-person or using real-time video communication, or through medically appropriate and timely visits to the premises where the animal, or the group of animals of which the patient is a part, is kept;

    c) The veterinarian is readily available or has provided for followup care in case of adverse reactions or failure of treatment.

3) Prohibits a veterinarian-client-patient relationship from being established solely by audio-only communication or by means of a questionnaire.

4) Defines "veterinary telemedicine" as the mode of delivering veterinary medicine via electronic communication technologies to facilitate the diagnosis, consultation, care management, or treatment of an animal patient, and includes, but is not limited to, real-time video and audio communication; real-time, two-way audio communication; and electronic transmission of images, diagnostics, data, and medical information.

5) Provides that real-time video communication is not required for the delivery of care via veterinary telemedicine after a veterinarian-client-patient relationship has been established, unless the veterinarian determines that it is necessary in order to provide care consistent with prevailing veterinary medical practice.

6) Provides that any person who holds a current license to practice veterinary medicine in California is authorized to practice veterinary telemedicine, and that practice shall be deemed to occur at the premises where the patient is located at the time that the veterinarian practices veterinary medicine.

7) Requires a veterinarian to obtain informed consent from the client prior to delivering care via veterinary telemedicine, including acknowledgment that the same standards of care will apply as in-person veterinary medical services and the client has the option to choose an in-person visit from a veterinarian at any time.

8) Requires a veterinarian who practices veterinary medicine to do all of the following:

   a) Ensure that the technology, method, and equipment used to provide veterinary telemedicine services comply with all current privacy protection laws.

   b) Have historical knowledge of the animal by obtaining and reviewing the patient's relevant medical history, and records. If medical records exist from a previous in-person visit and are available to the client, the client may transmit those records, including any diagnostic data contained therein, to the veterinarian electronically.

   c) Employ sound professional judgment to determine whether using veterinary telemedicine is an appropriate method for delivering medical advice or treatment to the patient and providing quality of care consistent with prevailing veterinary medical practice.

   d) Be able to refer the client to a veterinarian who may be able to see the patient in person upon the request of the client.

9) Authorizes a veterinarian that practices veterinary telemedicine to order, prescribe, or make available drugs for up to six months following each in-person or telemedicine examination.

10) Allows for a veterinarian to use veterinary telemedicine without establishing a veterinarian-client-patient relationship in order to provide advice in an emergency.

11) Makes various conforming changes to the Veterinary Medicine Practice Act and other statutes to reflect that veterinarians may deliver care through veterinary telemedicine.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is co-sponsored by the **American Society for the Prevention of Cruelty to Animals** and the **San Diego Humane Society**. According to the author:

> "During the pandemic, we saw how effective telemedicine can be for human healthcare, so why not apply this working model to veterinary care where there is a huge shortage?

Telemedicine is a proven, safe means for delivering care. With this bill, we can prevent thousands of animals from needlessly suffering."

**Background.**

*Telemedicine Generally.* California first formally recognized the advent of new telehealth technologies in 1996 when the Legislature enacted SB 1665 (Thompson), the Telemedicine Development Act. This bill set standards for the use of what was then called "telemedicine" by health care practitioners and insurers. The bill prohibited health insurers from requiring face-to-face contact between a health care practitioner and patient for services appropriately provided through telemedicine. The bill also exempted out-of-state practitioners from the Medical Practice Act when consulting either within California or across state lines, with a licensed practitioner in California; however, it prohibited the out-of-state practitioner from having ultimate authority over the care or primary diagnosis of a patient in California.

Much of the Telemedicine Development Act was subsequently repealed and replaced in 2011 through the enactment of AB 415 (Logue), which established the Telehealth Advancement Act to revise and update existing law to facilitate the advancement of telehealth as a service delivery mode in managed care and the Medi-Cal Program. The vernacular shift from "telemedicine" to "telehealth" reflected a general consensus among policymakers that telehealth is not itself a form of medicine, but simply a tool to deliver health care outside a traditional office visit. In California there is no distinction between in-person care and telehealth in terms of either the standard of care or the expectations of a physician-patient relationship.

The following year in 2012, the author of the Telehealth Advancement Act introduced AB 1733 (Logue) to further effectuate the changes to the state's telehealth laws. This bill updated a number of code sections to replace the term "telemedicine" with "telehealth" and expand the potential for the use of telehealth. AB 1733 also added a statute that expressly requiring any health care practitioner who provides services via telehealth to comply with the revised requirements and definitions set forth in the Telehealth Advancement Act, as well as any additional requirements contained in the practice act relating to the practitioner's licensed profession and any regulations adopted by the practitioner's licensing board pursuant to that practice act.

*Veterinary Telemedicine.* The Veterinary Medicine Practice Act requires a veterinarian to establish and maintain a veterinarian-client-patient-relationship before providing care to an animal patient. Among other requirements, this relationship is established when the client has authorized the veterinarian to make medical judgements, and when the veterinarian has gained sufficient knowledge of the animal to make a diagnosis, generally through an in-person examination. The Board's regulations effectuating the veterinarian-client-patient-relationship requirement additionally state the following:

"(e) No person may practice veterinary medicine in this state except within the context of a veterinarian-client-patient relationship or as otherwise permitted by law. A veterinarian-client-patient relationship cannot be established solely by telephonic or electronic means."

This provision was added by the Board in 2019. During that rulemaking process, the Board acknowledged that it had been asked by various stakeholders including the University of California, Davis, School of Veterinary Medicine to expand the authority of veterinarians to practice through telehealth since 2011, the year the Telehealth Advancement Act was passed.

However, while the Board considered presentations on potential alternative options to expand veterinary telemedicine, it ultimately chose to proceed with what stakeholders had characterized restrictive language. In its Final Statement of Reasons, the Board provided the following in response to one veterinarian's comment requesting that the Board delay its regulations until a more flexible approach could be negotiated:

> "While telemedicine is proving to be an effective form of treatment in human health care, animals are fundamentally different and cannot benefit from telemedicine in the same aspects that humans can. Unlike people, animals are unable to communicate their sickness or symptoms. Communication is expressed solely by the animal owner, who likely has no veterinary training to properly diagnose or express a sickness or symptom of the animal. For these reasons, it is important that the VCPR *[veterinarian-client-patient relationship]* is developed in person and not based solely on telephonic or electronic means. Otherwise, the veterinarian would not be familiar with the animal's medical history and could not effectively provide the best level of care via telemedicine. For veterinary science to be effective, it is important that the VCPR be established in person, so a full physical examination can be performed, and the veterinarian can get to know the animal. It is only after this relationship has been established that telemedicine may be an effective method of the continuance of treatment."

Then Board's regulations effectively prohibit the use of veterinary telemedicine in cases where the veterinarian-client-patient relationship has not already been established through an in-person examination. Additionally, it is generally understood that another in-person examination is required to reestablish the veterinarian-client-patient relationship prior to any subsequent diagnosis or treatment of a new medical condition for the animal. The regulations do authorize telemedicine to be conducted without a preexisting relationship in an emergency; however, that authority only extends to the length of time until the patient can be seen or transported to a veterinarian.

Generally speaking, the Board's regulations on the delivery of veterinary care through telehealth are substantially stricter than the requirements of the Telehealth Advancement Act or requirements specified for other health care practitioners. However, AB 1733 made it clear that each healing arts board has the authority to promulgate additional requirements through the adoption of regulations that are consistent with its governing practice act. The author and sponsors of this bill further allege that California is one of the least flexible states in terms of how and when veterinary telemedicine may be practiced.

The Board's regulations were somewhat loosened during the State of Emergency declared in response to the COVID-19 pandemic. On March 30, 2020, Governor Newsom signed Executive Order N-39-20, which established a process under the Department of Consumer Affairs for regulatory boards to request a waiver of professional licensing requirements, including requirements related to the practice and permissible activities. On June 4, 2020, the Director of Consumer Affairs issued an order granting the Board's request to temporarily waive its regulations to the extent they required veterinarians to perform an in-person examination of the animal in order to diagnose a new or different medical condition. A number of additional extensions of the waiver were subsequently issued, with the final order extending the waiver until October 31, 2021, at which time it was allowed to expire.

During the Board's most recent joint legislative sunset review in 2021, Issue #23 in the oversight hearing background paper authored by the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development posed the following question: "Should existing law be amended to increase access to veterinary services via telehealth?" The background paper noted that Board's MDC had "acknowledged the need for clarity in statutes and regulations around the definitions of telehealth and telemedicine" and that a plan was underway to convene stakeholder discussions. The background paper recommended that the Board provide an update on those discussions "and advise if there are statutory changes that could facilitate increased access to services while maintaining high standards of veterinary care."

In the midst of these discussions, the San Francisco Society for the Prevention of Cruelty to Animals (SPCA) filed a lawsuit against the Board in the United States District Court for the Eastern District of California, challenging the constitutionality of the Board's regulations restricting the practice of veterinary telemedicine. In their complaint, the plaintiffs argued that the Board's regulations violated the First Amendment by unduly restricting a veterinarian's right to exercise their freedom of speech by providing care and advice through telehealth. While the lawsuit was initially filed on May 3, 2021, the case was still pending as of April 4, 2023, when it was reassigned to a new district judge.

In January 2023, the Board voted to pursue a legislative proposal that would have amended the Veterinary Medicine Practice Act to statutorily recognize the use of veterinary telemedicine. This proposal would have largely codified the Board's existing regulations in that it would still require an in-person examination to establish a veterinarian-client-patient relationship prior to providing care for an animal or diagnosing or treating a new medical condition. The proposal would have allowed for some expanded exceptions and codified the use of "teletriage" for life-threatening cases in an emergency. Ultimately, the proposal was not introduced as legislation.

Partly in response to the Board's efforts to codify its current veterinary telemedicine policy, the author and sponsors of this bill are now seeking to enact legislation that would preempt the Board's regulations and allow for much more expansive use of veterinary telemedicine. This bill would expressly provide that a veterinarian-client-patient relationship may be established either in-person or using real-time video communication, regardless of whether the veterinarian has examined the animal patient and regardless of whether it was for the same condition. Veterinary care provided after the veterinarian-client-patient relationship has been established would not require real-time video communication, unless the veterinarian determines that it is necessary.

Additionally, this bill would enact several requirements for veterinarians that practice veterinary telemedicine. First, the veterinarian is required to ensure that the technology, method, and equipment used to provide veterinary telemedicine services comply with all current privacy protection laws. The veterinarian would also be required to have historical knowledge of the animal by obtaining and reviewing the patient's relevant medical history and any available medical records. The veterinarian would be required to employ sound professional judgment to determine whether using veterinary telemedicine is an appropriate method for delivering medical advice or treatment to the patient and providing quality of care consistent with prevailing veterinary medical practice. Finally, the veterinarian would be required to be able to refer the client to a veterinarian who may be able to see the patient in person upon the request of the client.

If enacted, this bill would significantly expand the use of telehealth technologies in the practice of veterinary medicine. The author and sponsors believe that this expansion would significantly improve access to care, particularly for animals and clients in rural communities. As with any legislation seeking to increase the use of new technologies in health care practice, discussion of this bill will include consideration of how to appropriately balance the goal of expanding access to care while continuing to protect the welfare of animal patients.

**Current Related Legislation.** AB 814 (Lowenthal) would authorize a licensed physical therapist to be registered with the Veterinary Medical Board as an authorized animal physical therapist and to provide animal physical rehabilitation. *This bill is pending in this committee.*

AB 1369 (Bauer-Kahan) would authorize an eligible out-of-state physician and surgeon to practice medicine in California without a license if the practice is limited to delivering health care via telehealth to an eligible patient who has a disease or condition that is immediately life-threatening. *This bill is pending in the Assembly Committee on Appropriations.*

**Prior Related Legislation.** AB 1535 (Committee on Business and Professions, Chapter 631, Statutes of 2021) extended the sunset date for the Veterinary Medical Board and made additional changes resulting from the sunset review process.

AB 415 (Logue, Chapter 547, Statutes of 2011) enacted the Telehealth Advancement Act.

SB 1665 (Thompson, Chapter 864, Statutes of 1996) enacted the Telemedicine Development Act.

**ARGUMENTS IN SUPPORT:**

A coalition of animal welfare groups that includes the co-sponsors of this bill, the **American Society for the Prevention of Cruelty to Animals** (ASPCA) and the **San Diego Humane Society**, along with the **California Animal Welfare Association**, **Social Compassion in Legislation**, and **Best Friends Animal Society**, is in support of this bill. The coalition writes: "AB 1399 will expand the use of veterinary telemedicine for licensed California veterinarians and significantly reduce animal suffering, alleviate financial and logistical barriers to veterinary care, improve pet retention, and extend the capacity of animal shelters to serve animals and their communities." The coalition further argues that "AB 1399 offers a lifeline to pet owners who face financial, geographic, or logistical obstacles to accessing veterinary care. While finances are a primary obstacle for all pet owners seeking veterinary care, many people live in underserved urban or rural, remote areas with few or no veterinary services available. More flexible access to telemedicine can help address these challenges and others, such as preventing unnecessary time off work for pet owners and ameliorating the difficulty of bringing pets to the clinic by many Californians, including seniors, disabled individuals, and those without transportation or those with anxious, potentially aggressive, chronically ill, or large animals."

**ARGUMENTS IN OPPOSITION:**

The **California Veterinary Medical Association** (CVMA) and the **American Veterinary Medical Association** (AVMA) write jointly in opposition to this legislation, stating: "The CVMA and AVMA believe that telemedicine has its place in veterinary medicine and supports California's current law, which permits its use to manage care of established patients through follow-up consultation, prescriptions, and triaging critical cases. However, this bill proposes completely eliminating the initial in-person examination or premise visit for an animal(s), which

is deeply concerning. Our opposition to this measure is rooted in several critical areas. First and foremost, animals, unlike people, cannot speak to express what they are feeling, and in fact instinctively hide pain and illness. Pet owners, despite their best intentions, very often miss or misinterpret signs and symptoms of trouble in their animals. Thus, relying on pet owners to provide the information that a veterinarian would otherwise collect when examining a pet in-person—especially relative to new medical conditions—can result in inaccurate diagnoses and erroneously prescribed treatments, risking adverse consequences for the animal patient."

**POLICY ISSUE(S) FOR CONSIDERATION:**

As discussed, the Telemedicine Development Act first set standards for the use of "telemedicine" in California in 1996. However, fifteen years later, the Telehealth Advancement Act made numerous changes to California law to reflect a more modern understanding of how communication technologies were expected to coexist with more traditional practice. One arguably technical yet still important change was the replacement of the term "telemedicine" with references to medicine being practiced "via telehealth."

While much of this bill's language references or borrows from provisions of law recast by the Telehealth Advancement Act, the term "veterinary telemedicine" is used throughout, in some instances suggesting that a different form of veterinary medicine is being practiced. It should be noted that the bill is clear that the same standards of care apply to veterinary telemedicine services and in-person veterinary medical services. However, it may still be appropriate to align the provisions of this bill with more recently accepting terminology used when describing the use of telehealth in providing care.

In addition, this bill currently states that "a person who holds a current license to practice veterinary medicine in this state is authorized to practice veterinary telemedicine." The bill then mirrors language found in the Telehealth Advancement Act by providing that the practice shall be deemed to occur at the premises where the patient is located at the time that the veterinarian practices veterinary medicine. However, the bill is not entirely clear that its intention is to require any veterinarian who provides care via telehealth to a patient who is located at the time in California to hold a license in California from the Board. The author may wish to clarify this provision.

**AMENDMENTS:**

1) To align terminology used in the bill with the Telehealth Advancement Act, replace various references to "veterinary telemedicine" with "veterinary medicine via telehealth," and make similar conforming changes.

2) Clarify that only a veterinarian who holds a current license in California may provide veterinary care to an animal located in California.

**REGISTERED SUPPORT:**

American Society for the Prevention of Cruelty to Animals *(Co-Sponsor)*
San Diego Humane Society *(Co-Sponsor)*
Best Friends Animal Society
California Animal Welfare Association
Humane Society of the United States

Humane Society Veterinary Medical Association
Michelson Center for Public Policy (UNREG)
San Francisco SPCA
Social Compassion in Legislation
Veterinary Virtual Care Association

**REGISTERED OPPOSITION:**

American Veterinary Medical Association
California Veterinary Medical Association

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

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1565 (Jones-Sawyer) – As Introduced February 17, 2023

**SUBJECT:** California Cannabis Tax Fund: local equity program grants.

**SUMMARY:** Beginning July 1, 2028, requires the Department of Cannabis Control (DCC) to use a disbursement of $15 million from the California Cannabis Tax Fund to assist local equity applicants and licensees gaining entry into, and to successfully operate in, the state's regulated cannabis marketplace.

**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) Authorizes the director of the DCC to appoint a deputy director of equity and inclusion. (BPC § 26010.5)

4) Establishes the California Cannabis Equity Act, enacted to ensure that persons most harmed by cannabis criminalization and poverty be offered assistance to enter the cannabis industry. (BPC §§ 26240 *et seq.*)

5) Defines "local equity program" as a local program that focuses on inclusion and support of individuals and communities in California's cannabis industry who are linked to populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization as evidenced by the local jurisdiction's equity assessment. (BPC § 26240(e))

6) Defines "equity assessment" as an assessment conducted by a local jurisdiction that was used to inform the creation of a local equity program, and that assessment may include the following:

    a) Reference to local historical rates of arrests or convictions for cannabis law violations.

    b) Identification of the impacts that cannabis-related policies have had historically on communities and populations within that local jurisdiction.

    c) Other information that demonstrates how individuals and communities within the local jurisdiction have been disproportionately or negatively impacted by the War on Drugs.

    (BPC § 26240(b))

7) Defines "local equity applicant" as an applicant who has submitted, or will submit, an application to a local jurisdiction to engage in commercial cannabis activity within that jurisdiction and who meets the requirements of its local equity program. (BPC § 26240(c))

8) Defines "local equity licensee" as a person who has obtained a license from a local jurisdiction to engage in commercial cannabis activity within that jurisdiction and who meets the requirements of that jurisdiction's local equity program. (BPC § 26240(d))

9) Authorizes the DCC to provide technical assistance to a local equity program that helps local equity applicants or local equity licensees. (BPC § 26242)

10) Establishes a grant program wherein local jurisdictions may apply to the Governor's Office of Business and Economic Development (GO-Biz) for a grant to assist with the development of an equity program or to assist local equity applicants and local equity licensees through that local jurisdiction's equity program. (BPC § 26244)

11) Requires the DCC to serve as a point of contact for local equity programs and to publish on its internet website local equity ordinances that have been enacted by the legislative body of the respective local jurisdiction, and model local equity ordinances created by advocacy groups and experts. (BPC § 26246)

12) Requires GO-Biz to annually submit a report to the Legislature regarding the progress of local equity programs that have received funding. (BPC § 26248)

13) Requires the DCC to develop and implement programs to provide waivers and deferrals for application fees, licensing fees, and renewal fees for equity applicants and licensees whose businesses are no less than 50 percent owned by persons who satisfy one of the following:

    a) They have previously been convicted of an offense related to the sale, possession, use, manufacture, or cultivation of cannabis, under past criminal justice policies implementing cannabis prohibition.

    b) They have previously been arrested for an offense related to the sale, possession, use, manufacture, or cultivation of cannabis, under past criminal justice policies implementing cannabis prohibition.

    c) Residence in a household with a household income less than or equal to 60 percent of the area median income for the applicable local jurisdiction.

    d) Residence in an area with a population disproportionately impacted by past criminal justice policies implementing cannabis prohibition.

    (BPC § 26249)

14) Establishes the Cannabis Tax Law. (Revenue and Tax Code (RTC) §§ 34010 *et seq.*)

15) Imposes a 15 percent excise tax upon purchasers of cannabis or cannabis products sold in this state in addition to the sales and use tax imposed by the state and local governments. (RTC § 34011.2)

16) Imposes a cultivation tax on all harvested cannabis that enters the commercial market at a rate of $9.25 per dry-weight ounce for cannabis flowers and $2.75 per dry-weight ounce for cannabis leaves; suspends the imposition of this tax effective July 1, 2022. (RTC § 34012)

17) Provides the Department of Tax and Fee Administration (CDTFA) with responsibility for administering and collecting taxes on cannabis businesses. (RTC § 34013)

18) Establishes the California Cannabis Tax Fund (Tax Fund) in the State Treasury wherein cannabis tax revenues are deposited. (RTC § 34018)

19) Specifies that money in the Tax Fund shall be disbursed by the Controller in the following order of funding priority:

    a) Funds sufficient to reimburse departments for any reasonable costs incurred through the implementation of the state's cannabis laws that are not otherwise reimbursed.

    b) $10 million to a public university in California annually to research and evaluate the implementation and effect of the state's cannabis laws, including the impact of legal cannabis on public health; the public safety implications of legal cannabis; the effectiveness of certain drug treatment programs; whether additional antitrust protections are needed in the recreational cannabis market; the economic impacts of the state's cannabis laws; and how to best tax cannabis based on potency, and the structure and function of licensed cannabis businesses; among other topics of study.

    c) $3 million to the Department of the California Highway Patrol (CHP) annually to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired by the use of cannabis.

    d) $10 million beginning with the 2018-19 fiscal year, then increasing by $10 million each year until reaching $50 million annually, to GO-Biz to award community reinvestments grants to local health departments and at least 50 percent to qualified community-based nonprofit organizations to support job placement, mental health treatment, substance use disorder treatment, system navigation services, legal services to address barriers to reentry, and linkages to medical care for communities disproportionately affected by past federal and state drug policies.

    e) $2 million annually to the University of California San Diego Center for Medicinal Cannabis Research to further its objectives.

    f) Remaining funds deposited into sub-trust accounts as follows:

        i) 60 percent into the Youth Education, Prevention, Early Intervention and Treatment Account, disbursed to the DHCS for programs for youth that are designed to educate about and to prevent substance use disorders and to prevent harm from substance use. The programs shall emphasize accurate education, effective prevention, early intervention, school retention, and timely treatment services for youth, their families, and their caregivers.

        ii) 20 percent into the Environmental Restoration and Protection Account, disbursed to the Department of Fish and Wildlife and the Department of Parks and Recreation to

fund activities related to the natural resources and wildlife implications of legal cannabis.

iii) 20 percent into the State and Local Government Law Enforcement Account, disbursed to the CHP to fund education regarding cannabis-impaired driving and to the Board of State and Community Corrections (BSCC) to award grants to local law enforcement to address the public health and safety implications of locally legalized cannabis.

(RTC § 34019)

20) Requires the Controller to additionally disburse, to the extent available, an amount necessary to enable funds disbursed to the sub-trust accounts to be equal to the 2020–21 fiscal year baseline. (BPC § 34019.01)

21) Prohibits the Legislature from changing the cannabis tax revenue funding allocations before July 1, 2028. (RTC § 34019(h))

**THIS BILL:**

1) Effective July 1, 2028, requires the Controller to disburse the sum of $15 million to the DCC each fiscal year, which the DCC shall then use to support local equity programs in eligible local jurisdictions to assist local equity applicants and licensees gaining entry into, and to successfully operate in, the state's regulated cannabis marketplace.

2) Provides that if the amount of the above disbursement would result in a reduction of funds to GO-Biz or the sub-trust accounts from the amount allocated in the 2027–28 fiscal year, then the disbursement shall be the highest amount, if any, that would not result in that reduction.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

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

"Support for equity applicants and equity license holders has been lacking historically. As more and more jurisdictions create equity license programs to help those disproportionately affected by the criminalization of cannabis to enter the industry, the State must provide more resources to get these businesses online. Last year, the Legislature provided $20 million in tax credits for equity operators. However, this is not enough support as tax credits require the business to be up and running. As such, AB 1565 provides front end support to help reduce barriers to entry, making it more likely that equity license holders can use other state assistance. With almost 90% of cannabis businesses in Los Angeles operating in the illegal market, more pathways to legal operation are essential."

**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 California Department of Public Health—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.

*Equity Programs.* Proponents of the AUMA argued that the state's legalization of recreational cannabis should be recognize and address the devastating impact of prohibition on the low-income and minority populations as a lawful industry begins to profit from the newly regulated marketplace. Throughout the decades in which the sale and use of cannabis was largely illegal, innumerable individuals—the majority of whom are people of color—were incarcerated for engaging in activities made lawful by Proposition 64. Many purport that with the passage of the AUMA representing the state's comfort with allowing for legal sales of cannabis to occur, those communities who were aggressively penalized by the product's previous illegality should be afforded an opportunity to participate in the marketplace.

However, many have pointed out that compliance with the requirements of MAUCRSA, in addition to standard business start-up costs, creates significant barriers to entering into the cannabis industry for populations without capital or financing. In response, many have advocated for programs specifically aimed at assisting economically disadvantaged communities enter into the cannabis industry through financial assistance. SB 1294 (Bradford)—cited as the California Cannabis Equity Act of 2018—was chaptered to codify the state's recognition of local equity programs designed to enable populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization to become approved participants in the cannabis marketplace.

Under the California Cannabis Equity Act, local jurisdictions may apply for and receive grant funding for purposes of providing assistance to local equity applicants or licensees seeking to gain entry to the state's regulated cannabis marketplace. Subsequent trailer bill language relating to cannabis modified the Act to provide that a local jurisdiction must make an "equity assessment" to inform the creation of a local program. These equity assessments include the following:

1. Reference to local historical rates of arrests or convictions for cannabis law violations.

2. Identification of the impacts that cannabis-related policies have had historically on communities and populations within that local jurisdiction.

3. Other information that demonstrates how individuals and communities within the local jurisdiction have been disproportionately or negatively impacted by the War on Drugs.

Once a local equity program has been established, the jurisdiction may receive grant funding to fund the administration of its local equity program. Under such a program, the local jurisdiction may provide assistance to applicants comprised of low-interest or no-interest loans to fund startup and ongoing costs such as rent, legal assistance, furniture, capital improvements, training, regulatory compliance, and the testing of cannabis. Equity funding may also be used by local jurisdictions to fund the provision of technical assistance and expenses associated with supporting efforts to provide sources of capital and assist in the development or administration of programs.

The Budget Act of 2021 included $20 million to fund the California Cannabis Equity Act. It also changed the grantmaking agency from the DCC to GO-Biz. The Budget additionally authorized the newly established DCC to appoint a Deputy Director of Equity and Inclusion to further the Department's mission to implement inclusive cannabis policies.

In 2019, SB 595 (Bradford) was enacted to provide further relief to equity applicants and licensees seeking to enter the marketplace by allowing the DCC to waive or defer fees. This provides another form of financial support for individuals seeking to become successful cannabis licensees who are already seeking or who are receiving support through a local equity program. SB 595 was conditioned on the allocation of funds to backfill lost revenue associated with the fee waiver or deferral prior to it being offered by the DCC. The Budget Act of 2021 allocated $30 million to implement the fee waiver and deferral programs and required the DCC to develop and implement a fee waiver program by January 1, 2022, and a fee deferral program by January 1, 2023, for all social equity applicants and who meet certain criteria.

In June of 2022, the DCC modified its interpretation of statute's definition for the term "equity applicants and licensees," increasing the gross revenues threshold applied in its previous regulations from $1.5 million to $5 million. In its Finding of Emergency and Notice of Proposed Readoption, the DCC explained the increase in the gross revenues threshold:

> "Based on feedback from licensees that currently participate in their local jurisdiction's equity programs, the Department determined that an expected gross revenue less than or equal to $5,000,000 more accurately corresponds to licenses held by equity commercial cannabis business operators. This subsection is necessary to ensure that fee waivers are appropriately allocated to the range of equity businesses, including retailers, which often have larger gross receipts. To ensure that licensees are aware of how to demonstrate their gross revenue, this subsection also provides an example of the types of financial data that is typically held by the applicant or licensee and may be submitted for the Department's consideration."

The DCC's regulations also provided that an applicant or licensee may be eligible if they have an immediate family member that was arrested or convicted of a cannabis related offense. In support of this change, the DCC argued that "when an immediate family member was arrested for, or convicted of, an offense related to cannabis activity, the disproportionate impact affected the entire family." The regulations define "immediate family member" as "a child, stepchild, parent, stepparent, brother, sister, half-brother, half-sister, stepsibling, legal guardian, grandparent or great grandparent. The Department identified these particular family members because such family members' cannabis arrests or convictions generally have had a direct impact on household income and stability of family structures."

*Cannabis Taxation.* Under MAUCRSA, a 15 percent excise tax is imposed on sales of cannabis and a tax on cannabis cultivation is imposed at a rate of $9.25 per dry-weight ounce of cannabis flowers and $2.75 per dry-weight ounce of cannabis leaves that are harvested and brought to market. These taxes are distinct from state sales and use taxes, which apply to recreational cannabis, as well as any taxes imposed by local governments. One of the principal arguments made by the proponents of Proposition 64 was that legalizing cannabis would result in significant tax revenue for use by state and local governments. In its analysis of Proposition 64, the Legislative Analyst's Office (LAO) stated that the initiative's fiscal effects were "subject to significant uncertainty." However, the LAO suggested in the Proposition 64 voter guide that over time, the legal sale of legalized cannabis could result in state and local tax revenues the LAO said "could eventually range from the high hundreds of millions of dollars to over $1 billion annually."

Excise tax and cultivation tax revenues are deposited into a special fund referred to as the California Cannabis Tax Fund and are then allocated for a variety of purposes in order of priority. First, expenditures incurred by state agencies responsible for implementing cannabis laws are to be paid for through the Tax Fund. This includes reasonable costs incurred by the CDTFA for administering and collecting the taxes, not to exceed 4% revenue; reasonable costs incurred by the DCC and other licensing agencies for licensing and enforcement programs; reasonable costs incurred by the Department of Fish and Wildlife, the State Water Resources Control Board, and the Department of Pesticide Regulation for carrying out their environmental protection duties under the state's cannabis laws; and other state agencies. Allocations to reimburse these state entities shall only be made to the extent the entities are not otherwise reimbursed for their costs.

After state agency cost reimbursement, Tax Fund revenue is next allocated to fund a series of specific programs designated under Proposition 64. These programs are to be provided with precise amounts of funding totaling $25 million and are to be appropriated annually until the 2028-29 fiscal year. This includes $10 million to a public university to research and evaluate the implementation and effect of legal cannabis and make recommendations to the Legislature and Governor regarding possible changes to the law; $3 million to the CHP to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired; $10 million to GO-Biz, which subsequently increases by an additional $10 million each fiscal year until reaching a total disbursement of $50 million annually beginning in the 2022-23 fiscal year, to administer a community reinvestments grants program; and $2 million to the University of California San Diego Center for Medicinal Cannabis Research to further the objectives of the center, including the enhanced understanding of the efficacy and adverse effects of cannabis as a pharmacological agent.

After each of the above allocations have been made in sequential order, totaling $25 million, any remaining revenue in the Tax Fund is divided into sub-trust accounts according to a percentage outlined by Proposition 64. The division is as follows:

1) 60 percent of the remaining revenue is deposited in the Youth Education, Prevention, Early Intervention and Treatment Account, and disbursed by the Controller to the DHCS for programs for youth that are designed to educate about and to prevent substance use disorders and to prevent harm from substance use.

2) 20 percent of the remaining revenue is deposited in the Environmental Restoration and Protection Account, and disbursed by the Controller as follows:

    a. To the Department of Fish and Wildlife and the Department of Parks and Recreation for the cleanup, remediation, and restoration of environmental damage in watersheds affected by cannabis cultivation and related activities including, but not limited to, damage that occurred prior to enactment of Proposition 64, and to support local partnerships for this purpose. The Department of Fish and Wildlife and the Department of Parks and Recreation may distribute a portion of the funds they receive from the Environmental Restoration and Protection Account through grants.

    b. To the Department of Fish and Wildlife and the Department of Parks and Recreation for the stewardship and operation of state-owned wildlife habitat areas and state park units in a manner that discourages and prevents the illegal cultivation, production, sale, and use of cannabis and cannabis products on public lands, and to facilitate the investigation,

enforcement, and prosecution of illegal cultivation, production, sale, and use of cannabis or cannabis products on public lands.

c. To the Department of Fish and Wildlife to assist in funding the watershed enforcement program and multiagency taskforce to facilitate the investigation, enforcement, and prosecution of these offenses and to ensure the reduction of adverse impacts of cannabis cultivation, production, sale, and use on fish and wildlife habitats throughout the state.

3) 20 percent of the remaining revenue is deposited in the State and Local Government Law Enforcement Account and disbursed by the Controller as follows:

a. To the CHP for conducting training programs for detecting, testing and enforcing laws against driving under the influence of alcohol and other drugs, including driving under the influence of cannabis.

b. To the CHP to fund internal programs and grants to qualified nonprofit organizations and local governments for education, prevention, and enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis; programs that help enforce traffic laws, educate the public in traffic safety, provide varied and effective means of reducing fatalities, injuries, and economic losses from collisions; and for the purchase of equipment related to enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis.

c. To the BSCC for making grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of Proposition 64. The BSCC shall not make any grants to local governments which have banned the cultivation, including personal cultivation or retail sale of cannabis.

d. The Department of Finance shall determine the allocation of revenues between the agencies; provided, however, beginning in the 2022–23 fiscal year the amount allocated to CHP for training programs shall not be less than $10 million annually and the amount allocated to the CHP for grants shall not be less than $40 million.

A trailer bill enacted as part of the Budget Act of 2022 made a series of changes to the imposition and collection of cannabis taxes. Specifically, AB 195 (Committee on Budget) suspended the state's cultivation tax, effective July 1, 2022. The trailer bill maintained the 15 percent cannabis excise tax, as required by Proposition 64, until June 30, 2025; however, the trailer bill moved collection of that tax from the distributor to the point-of-sale.

The trailer bill required the CDTFA to adjust the excise tax every two years by a rate that would generate an amount of revenue equivalent to what would have been collected from the cultivation tax. Finally, the trailer bill also set a baseline of new cannabis tax revenue for Allocation 3 entities (these entities use cannabis revenues to operate youth programs related to substance use education, prevention, and treatment, environmental programs, and law enforcement) at $670 million in 2022-23, 2023-24, and 2024-25, which may be satisfied with tax revenues, or General Fund backfill if needed. The Budget Act of 2022 set aside $150 million General Fund to backfill any lost revenue.

Proposition 64 expressly prohibited the Legislature from changing how money in the Cannabis Tax Fund is allocated until July 1, 2028. Beginning on that date, the Legislature will be authorized to change those allocations by majority vote to further the purposes of Proposition 64. However, Proposition 64 prohibits any changes to the allocations from resulting in a reduction of funds to GO-Biz or the sub-accounts from the amount allocated to each account in the 2027-28 fiscal year.

This bill would amend the Cannabis Tax Law to create a new required disbursement from the Cannabis Tax Fund of $15 million. This money would then be used by the DCC to further support local equity applicants and licensees in gaining entry into, and successfully operating in, the state's regulated cannabis marketplace. The provisions of the bill would not go into effect until July 1, 2028, and the new disbursement would be prohibited from resulting in a reduction of funds to GO-Biz or the sub-accounts, as prohibited by Proposition 64. While the changes in this bill would not go into effect until several years from now, as authorized by the AUMA, the author's intent is to allow for equity applicants and licensees to receive support funds from cannabis tax revenue at the earliest possible date, to the extent allowed by Proposition 64.

**Prior Related Legislation.** AB 195 (Committee on Budget, Chapter 56, Statutes of 2022) suspended the cultivation tax and made changes to the collection of the excise tax.

AB 2925 (Cooper, Chapter 394, Statutes of 2022) requires the Department of Health Care Services to provide a spending report regarding funds from the Youth Education, Prevention, Early Intervention and Treatment Account derived from cannabis tax revenue.

SB 595 (Bradford, Chapter 852, Statutes of 2019) required the DCC to develop and implement a program that provides a fee deferral or waiver to obtain or renew a license for needs-based applicants and licensees.

SB 1294 (Bradford, Chapter 794, Statutes of 2018) authorized local jurisdictions to request technical assistance from the DCC to establish local equity programs and authorized, upon appropriation, the DCC to fund grants for the same purpose.

**ARGUMENTS IN SUPPORT:**

The **California Cannabis Industry Association** (CCIA) supports this bill. According to the CCIA: "AB 1565 provides front-end support to current and prospective social equity licensees,, by guaranteeing $15 million in the Cannabis Tax Fund will go toward supporting local equity programs in 2028 and onward. With almost 90% of cannabis businesses in Los Angeles alone operating in the illegal market, and more equity programs coming online each year, more pathways to support operators transitioning to licensure are essential."

**ARGUMENTS IN OPPOSITION:**

None on file.

**REGISTERED SUPPORT:**

California Cannabis Industry Association
California NORML
The Parent Company

**REGISTERED OPPOSITION:**

None on file.

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

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1610 (Jones-Sawyer) – As Amended March 23, 2023

**SUBJECT:** Cannabis: Department of Cannabis Control.

**SUMMARY:** Subjects cannabis testing laboratories to blind proficiency testing and annual audits to ensure consistency of results across laboratories.

**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) §§ 26000-26325)

2) Establishes the Department of Cannabis Control (DCC) within the Business, Consumer Services, and Housing Agency for purposes of administering and enforcing MAUCRSA. (BPC § 26010)

3) Requires licensed sellers of cannabis or cannabis products to have a representative sample tested by a licensed testing laboratory. (BPC § 26100(a))

4) Requires DCC to develop criteria to determine which batches shall be tested, where all testing of the samples shall be performed on the final form in which the cannabis or cannabis product will be consumed or used. (BPC § 26100(b))

5) Requires a testing laboratory to issue a certificate of analysis (COA) where the chemical profile of the sample conforms to the labeled content of specified compounds, and where the presence of contaminants does not exceed the level established by DCC, as specified. (BPC § 26100(d))

6) Specifies that for edible cannabis products, the milligrams of THC per serving shall not deviate from 10 milligrams by more than 10 percent. (BPC § 26100(d)(3).

7) Allows a testing laboratory to amend a COA to correct minor errors, as defined by DCC. (BPC § 26100(e)

8) Requires DCC, on or before January 1, 2023, to establish one or more standard cannabinoid test methods, including standardized operating procedures that must be used by all testing laboratories. (BPC § 26100(f)(2))

9) Requires the testing laboratory to conduct all testing in a manner consistent with general requirements for the competence of testing and calibration activities, including sampling and using verified methods. (BPC § 26100(g))

10) Requires all testing laboratories performing tests to obtain and maintain ISO/IEC 17025 accreditation as required by DCC in regulation. (BPC § 26100(h))

11) Specifies that if a test result falls outside the specifications authorized by law or regulation, the testing laboratory shall follow a standard operating procedure to confirm or refute the original result. (BPC § 26100(i)(1))

12) Authorizes a testing laboratory to retest the sample if both the testing laboratory notifies DCC in writing that the test was compromised due to equipment malfunction, staff error, or other circumstances allowed by DCC *and* DCC authorizes the testing laboratory to retest the sample. (BPC § 26100(i)(2))

13) Requires a testing laboratory to destroy the remains of the sample of cannabis or cannabis product upon completion of the analysis, as determined by DCC through regulations. (BPC § 26100(j))

14) Prohibits a testing laboratory from being licensed by DCC unless the laboratory meets all of the following:

    a) Complies with any other requirements specified by DCC.

    b) Notifies DCC within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.

    c) Has established standard operating procedures that provide for adequate chain of custody controls for samples transferred to the testing laboratory for testing. (BPC § 26102)

15) Prohibits, except as provided, a testing laboratory from acquiring or receiving cannabis or cannabis products except from a licensee or from distributing, selling, or dispensing cannabis or cannabis products from the licensed premises from which the cannabis or cannabis products were acquired or received. (BPC § 26104(c))

16) Subjects batches of cannabis to quality assurance standards and testing prior to sale. (BPC § 26110(a))

17) Requires a distributor to arrange for a testing laboratory to obtain a representative sample of each cannabis batch at the distributor's licensed premises. After obtaining the sample, the testing laboratory representative is required to maintain custody of the sample and transport it to the testing laboratory. (BPC § 26110(d))

18) Specifies that upon issuance of a certificate of analysis(COA) by the testing laboratory that the cannabis batch has passed the testing requirements, the distributor must conduct a quality assurance review before distribution to ensure the labeling and packaging of the cannabis and cannabis products are appropriate. (BPC § 26110(e))

19) Requires DCC to employ or contract with a quality assurance compliance monitor who does not hold a license or own or have any ownership interest in a licensee or the premises of a licensee. (BPC § 26110(f)(1))

20) Requires the quality assurance compliance monitor to conduct random quality assurance reviews at a distributor's licensed premises before distribution to ensure the labeling and packaging of the cannabis and cannabis products are appropriate. (BPC § 26110(f)(2))

21) Authorizes the quality assurance compliance monitor to have access to all records and test results required of a licensee by law in order to conduct quality assurance analysis and to confirm test results. (BPC § 26110(f)(3))

**THIS BILL:**

1) Requires DCC to maintain on its website a record of recall orders issued in an unspecified number of preceding years.

2) Requires the record of a recall to include the date, location, licensee name and license number, and whether the recall was voluntary or mandatory.

3) Subjects testing laboratories to blind proficiency testing to ensure consistency of results across laboratories.

4) Requires DCC, on or before January 1, 2025, to establish a standard laboratory blind proficiency test method, including standardized operating procedures that must be utilized by all testing laboratories.

5) Subjects testing laboratories to annual audits by DCC.

6) Requires DCC, on or before January 1, 2025, to establish standard operating procedures for conducting audits, including frequency, manner, and notification requirements.

7) Requires the results of the audit, including any record of violation, to be made available on DCC's website for an unspecified number of years.

8) Requires DCC, on or before January 1, 2025, to establish quality assurance standards and testing procedures for products available for retail sale.

9) Specifies that the quality assurance and testing procedures must include, but are not limited to, laboratory testing of products that are available for retail sale to ensure consistency with presale laboratory testing.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by *SC Labs*. According to the author:

> When Californians voted to approve cannabis use, they did so with trust in the marketplace. Unfortunately, bad actors have violated that trust with improperly labeled products and artificially inflated prices. As the cannabis industry continues to grow in California, [this bill] will help protect consumers and the legal cannabis market by ensuring products are accurately labeled and providing greater transparency in product testing. This bill, with the ability to conduct testing and product reviews, improves accountability and gives regulators the tools to restore consumer trust.

**Background.**

*Department of Cannabis Control.* Since July 1, 2021, DCC has been the single entity responsible for administering and enforcing the majority of California's cannabis laws, collectively known as MAUCRSA. 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]

*Cannabis testing.* Cannabis products are required to be tested before they can be sold to ensure that they are free of contaminants (e.g., pesticides) and labeled with accurate amounts of cannabinoids and terpenes.[2] Results are reported on a Certificate of Analysis (COA), which is required to be uploaded to DCC's track and trace system and emailed directly to DCC[3]. If any cannabis or cannabis products fail testing, the entire batch of goods must be destroyed by the distributor or remediated by a manufacturer.[4] Remediation is the process of removing contaminants from a product and must be approved by DCC in advance.[5] After remediation, the cannabis or cannabis goods are re-tested. If they pass, then the goods can be sold.[6]

Cannabis testing laboratories must be licensed by DCC, maintain ISO accreditation, use standardized operating procedures, develop a laboratory quality assurance program, and participate in a proficiency testing program.[7]

*Laboratory Shopping and THC Inflation.* According to this bill's sponsor and supporters, consumers are generally willing to pay more for cannabis and cannabis products with higher levels of THC. As a result, they allege that there is an incentive to shop around for the testing laboratory that will report the highest potency rates for their products. Unscrupulous testing laboratories, they assert, will artificially inflate THC levels by using unscientific methods or by committing fraud. As reported by the *Cannabis Industry Journal*, in 2021, a handful of laboratories collectively purchased and tested over 150 cannabis products from licensed retailers (i.e. dispensaries).[8] They found that 87 percent of the samples contained less THC than advertised.[9]

This committee is currently aware of one lawsuit related to THC inflation. In *Christian Ayala et al vs Central Coast Agriculture, Inc.*, the plaintiffs accuse the defendant of false and misleading

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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] Department of Cannabis Control. (n.d.). *Testing laboratories*. Department of Cannabis Control. Retrieved April 12, 2023, from https://cannabis.ca.gov/licensees/testing-laboratories/
[3] Ibid.
[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Paulson, E., Swider , J., & Eisenberg, Z. (2022, July 28). *The inflated THC crisis plaguing California Cannabis*. Cannabis Industry Journal. Retrieved April 13, 2023, from https://cannabisindustryjournal.com/feature_article/the-inflated-thc-crisis-plaguing-california-cannabis/
[9] Ibid.

labeling and marketing of the THC quantity in Raw Garden Infused Joints.[10] This case is pending in the Santa Clara County Superior Court.

In 2021, the Legislature passed and the Governor signed, *SB 544 (Laird), Chapter 547, Statutes of 2021*, which required DCC to establish standardized cannabinoid test methods to be used by all testing laboratories by January 1, 2023. DCC is in the process of finalizing those regulations. This bill would go further by requiring DCC by January 1, 2025, to establish a standard laboratory blind proficiency test method for use by all testing laboratories and to establish quality assurance standards and testing procedures for products available for retail sale. Additionally, this bill would require DCC to annually audit testing laboratories. The sponsor of this bill, SC Labs, says that its testing laboratory in Santa Cruz has been operating since 2010 on a provisional license and has never been inspected in person.

*Recalls.* DCC has the authority to issue mandatory recalls for cannabis products that present an immediate or serious threat to consumers and other remedies would cause an unreasonable delay.[11] When DCC issues a mandatory recall, it notifies the licensees who have the affected product such as a dispensary.[12] At the time of this writing, DCC has one mandatory recall listed on its website dating back to January 26, 2022.[13] DCC currently lists three *voluntary* recalls on its website, with the oldest dating back to September 28, 2022.[14] Voluntary recalls are initiated by licensees that have been contaminated or misbranded.[15]

The cannabis regulatory entities in the states of Washington and Colorado list recalls on their websites dating back to 2016.[16] [17] Similarly, in Oregon, Michigan, and Nevada, recalls are listed dating back to 2017, 2019, and 2020, respectively.[18] [19] [20] Although the number of recalls listed on DCC's website may reflect the total number of recalls that have occurred since DCC's formation in 2021, this bill would ensure that DCC posts every recall dating back to an unspecified year.

**Current Related Legislation.**

*AB 623 (Chen)* would require DCC to establish regulations to adjust testing variances for edible cannabis products that include less than five milligrams of THC in total.

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[10] Christian Ayala et al. vs Central Coast Agriculture, Inc. (Superior Court for the State of California County of Santa Clara November 21, 2022). Retrieved April 13, 2023, from https://milberg.com/wp-content/uploads/sites/2/2023/01/2022.11.21-Complaint-CentralCoastAgriculture.pdf
[11] Department of Cannabis Control. (n.d.). *Cannabis recalls and safety notices*. Department of Cannabis Control. Retrieved April 13, 2023, from https://cannabis.ca.gov/resources/cannabis-recalls-and-safety-notices/
[12] Ibid.
[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Washington State Liquor and Cannabis Board. (n.d.). *Notice of Recalls*. Notice of Recalls | Washington State Liquor and Cannabis Board. Retrieved April 14, 2023, from https://lcb.wa.gov/marj/notice_of_recalls
[17] Colorado Department of Revenue. (n.d.). *MED Health and Safety Advisories*. Colorado Department of Revenue. Retrieved April 14, 2023, from https://sbg.colorado.gov/med/health-and-safety-advisories
[18] Oregon Liquor and Cannabis Commission. (n.d.). *Product Recall Notices*. Oregon Liquor and Cannabis Commission. Retrieved April 14, 2023, from https://www.oregon.gov/olcc/Pages/product-recalls.aspx
[19] Michigan Cannabis Regulatory Agency. (n.d.). *MRA Bulletins*. Michigan Cannabis Regulatory Agency. Retrieved April 14, 2023, from https://www.michigan.gov/cra/bulletins
[20] *Public Health and Safety Advisories*. Nevada Cannabis Compliance Board. (n.d.). Retrieved April 14, 2023, from https://ccb.nv.gov/guidance/#item-1

**Prior Related Legislation.**

*SB 544 (Laird), Chapter 547, Statutes of 2021*, required DCC to, by January 1, 2023, establish standardized cannabinoid test methods to be used by all testing laboratories.

**ARGUMENTS IN SUPPORT:**

*SC Labs*, the sponsor of this bill, writes in support:

> Every consumer market is based on trust that a product's label accurately describes its contents. Right now, bad actors in California's legal cannabis industry are breaking that trust by artificially inflating THC on product labels through fraudulent testing results. For example, one recent public test of over 150 random products found that 87% illegally overstated their THC content and that a number of products also contained harmful levels of pesticides.
>
> This fraud is motivated by profit, and current market incentives make cheating a financially sound strategy. Consumers' have demonstrated a willingness to pay higher prices for products with more THC, so higher THC labels means more revenue. As a result, bad-actor labs intentionally inflate THC levels through unscientific methods or outright fraud that puts consumers at risk. This dynamic creates a race to the bottom as market participants feel the need to keep up with ever-increasing potency numbers while labs who refuse to inflate results lose market share. Without greater enforcement and transparency in the market, this dynamic will continue to weaken confidence in the legalized market and harm industry groups that operate with integrity.
>
> […]
>
> [This bill] will help strengthen the legal market by eliminating testing fraud, promoting transparency, and restoring trust in the legal market. Measures like blind proficiency testing, annual in-person auditing of labs, allowing the randomized testing of shelf products, and public sharing of all past recalls will let consumers know the cannabis they're buying is safe, reliable, and accurately dosed.

**ARGUMENTS IN OPPOSITION:**

None on file.

**POLICY ISSUE(S) FOR CONSIDERATION:**

*Random Shelf Testing.* This bill would require DCC to establish quality assurance standards and testing procedures for cannabis and cannabis products available for sale at dispensaries. However, existing law already requires DCC to employ or contract with a quality assurance compliance monitor to conduct random quality assurance reviews at a distributor's licensed premises before distribution to ensure the labeling and packaging of the cannabis and cannabis products are appropriate. The quality assurance compliance monitor is authorized to access all records and test results required of a licensee by law in order to verify those test results. The author may wish to consider working within the existing framework to ensure that cannabis and cannabis products for sale are reviewed for quality assurance.

*Public Disclosure of Violations.* This bill would require DCC to annually audit testing laboratories and to post the results of the audit, including any record of violation, for a certain number of years. The author may wish to consider the utility in disclosing a violation, even after a violation has been remedied, when determining the number of years to place into the bill.

**IMPLEMENTATION ISSUE(S) FOR CONSIDERATION:**

*Audits.* Although the author intends for this bill to require DCC to conduct annual audits of testing laboratories *in-person,* this bill does not explicitly require them to. The author may wish to specify that annual audits are to be performed in person. At the time of this writing, there are 43 active commercial testing laboratory licensees. The author may wish to consider the feasibility for DCC to audit each laboratory in-person on an annual basis.

*Details Outstanding.* This bill currently requires DCC to post on its website every mandatory recall that has occurred dating back to an unspecified year. Similarly, the bill currently requires DCC to post audit results on its website for an unspecified number of years. The author should amend the bill to include a specific year and number of years, respectively.

**REGISTERED SUPPORT:**

SC Labs (sponsor)
Anresco Laboratories
Cannabis Chamber of Commerce
Emerald Scientific
Infinite Chemical Analysis Labs

**REGISTERED OPPOSITION:**

None on file.

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