California State Assembly

BUSINESS AND PROFESSIONS

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MARC BERMAN
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AGENDA

Tuesday, June 21, 2022
9:30 a.m. -- 1021 O Street, Room 1100

SPECIAL ORDER OF BUSINESS

1.	SB 1375	Atkins	Nursing: nurse practitioners.

BILLS HEARD IN FILE ORDER

2.	SB 401	Pan	Psychology: unprofessional conduct: disciplinary action: sexual acts.
3.	SB 1097	Pan	Cannabis and cannabis products: labeling and advertisement.
4.	SB 1087	Gonzalez	Vehicles: catalytic converters.
5.	SB 1186	Wiener	Medicinal Cannabis Patients' Right of Access Act.
6.	SB 1194	Allen	Public restrooms: building standards.
7.	SB 1247	Hueso	Franchises.
8.	SB 1317	Bradford	Secondhand goods: tangible personal property: reporting requirements.

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 401 (Pan) – As Amended June 6, 2022

SENATE VOTE: 38-0

SUBJECT: Psychology: Unprofessional Conduct: Disciplinary Action: Sexual Acts

SUMMARY: Revises and recasts the circumstances under which specified sexual acts constitute unprofessional conduct by psychologists and registered psychological associates.

EXISTING LAW:

1) Establishes the Board of Psychology (Board) under the Department of Consumer Affairs (Department), to license and regulate psychologists, and sunsets the Board on January 1, 2022. (Business and Professions Code (BPC) § 2920)

2) States that no person may engage in the practice of psychology or represent himself or herself as a psychologist without a license issued by the Board, as specified. (BPC § 2903(a))

3) Defines the "practice of psychology" as rendering or offering to render to individuals, groups, organizations, or the public any psychological services involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships, and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations. (BPC § 2903(a))

4) States that the application of the principles and methods in 3) above includes but is not restricted to: assessment, diagnosis, prevention, treatment, and intervention to increase effective functioning of individuals, groups, and organization. (BPC § 2903(b))

5) Requires that protection of the public be the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 2920.1)

6) Requires any psychotherapist or employer of a psychotherapist who becomes aware through a client that the client had alleged sexual intercourse, sexual behavior, or sexual contact with a previous psychotherapist during the course of a prior treatment to provide a brochure to the client that delineates the rights of, and remedies for, clients who have been involved sexually with their psychotherapists. Requires the psychotherapist or employer to discuss the brochure with the client. (BPC § 728 (a))

7) For purposes of the brochure, defines "sexual contact" as the touching of an intimate part of another person, and "sexual behavior" as inappropriate contact or communication of a sexual

nature. "Sexual behavior" does not include the provision of appropriate therapeutic interventions relating to sexual issues. (BPC § 728 (c)(2)

8) Authorizes the BOP to suspend or revoke the registration or license of any registrant or licensee found guilty of unprofessional conduct, which includes any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions, or duties of a psychologist, psychological assistant, or registered psychologist. (BPC § 2960 (o))

9) Requires any proposed decision or decision issued under the Psychology Licensing Law that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact with a patient, or with a former patient within two years following termination of therapy, contain an order of revocation. The revocation shall not be stayed by the administrative law judge (ALJ). (BPC § 2960.1)

THIS BILL:

1) Defines for purposes of this bill:

   a) "Sexual abuse" to mean "the touching of an intimate part of a person by force or coercion";

   b) "Sexual behavior" to mean inappropriate psychical contact or communication of a sexual nature with a client or a former client for the purposes of sexual arousal, gratification, exploitation, or abuse," but does not include the provisions of appropriate therapeutic intervention relating to sexual issues;

   c) "Sexual contact" to mean the touching of an intimate part of a client or a former client; and

   d) "Sexual misconduct" to mean inappropriate conduct or communication of a sexual nature that is substantially related to the qualifications, functions, or duties of a psychologist, psychological assistant, or registered psychologist.

2) Clarifies that any act of sexual contact, as defined, including with a patient or with a former patient within two years following termination of therapy, is unprofessional conduct, as specified.

3) States that a proposed or issued decision that contains a finding that the licensee or registrant engaged in an act of sexual abuse, sexual behavior, or sexual misconduct, as defined, may contain an order of revocation.

4) Makes other technical and clarifying changes.

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

COMMENTS:

Purpose. This bill is sponsored by **The California State Board of Psychology.** According to the author, "psychologists see their patients at their most vulnerable. Implicit trust is paramount for the success of that relationship. The violation of that trust not only reflects poorly upon the offender, it reflects poorly on the profession as a whole. Currently, the Board of Psychology is unable to sufficiently punish one of the worst violations, sexual misconduct. They cite the wording of the law relating to unprofessional sexual misconduct as a major obstacle in holding violators accountable. SB 401 would help solve this problem by clarifying the circumstances under which specified sexual acts constitute unprofessional conduct."

Background.

Board of Psychology: California recognized psychology as a vocation with the Certification Act of 1958, which provided only title protection to psychologists. In 1967, the Legislature statutorily defined the profession of psychology and required licensure to practice. The Board regulates licensed psychologists, registered psychological assistants, and registered psychologists. It is funded by license, application, and examination fees, and receives no revenue from California's General Fund. The Board consists of nine members (five licensed psychologists and four public members) who are appointed to four-year terms.

According to the Board's 2019-2023 Strategic Plan, its mission is to protect consumers of psychological services by licensing psychologists, regulate the practice of psychology, and support the evolution of the profession. Additionally, the Board's most recent strategic plan notes the key areas of focus include the following:

- Protecting the health, safety, and welfare of consumers of psychological services with integrity, honesty, and efficiency.
- Advocating the highest principles of professional psychological practice.
- Empowering the consumer through education on licensee/ registrant disciplinary actions and through providing the best available information on current trends in psychological service options.

Under current law, when an investigation finds that a psychologist had sexual contact with a client (patient or client) or former client within two years of termination of therapy, the proposed decision to impose discipline that the Administrative Law Judge (ALJ) recommends to the Board must include a recommendation for an order of revocation. The Board maintains ultimate adjudicatory discretion over the adoption of the final discipline against a licensee, but current law ensures that instances of sexual intercourse and sexual contact, revocation must be the discipline recommended by an ALJ.

There are cases followed by thorough investigations that reveal clear instances of egregious sexual behaviors between a psychologist and a client during or within two years of termination of therapy. According to BPC § 2960.1, when an investigation finds that a psychologist had sexual contact with a client patient or former client within two years of termination of therapy, the proposed disciplinary decision the ALJ recommends to the Board for adoption must include a recommendation for an order of revocation. The Board maintains ultimate adjudicatory discretion over the adoption of the final discipline against a licensee, but current law ensures in

instances sexual contact, which includes sexual intercourse, revocation must be the discipline recommended by an ALJ.

However, BPC § 728 currently defines sexual contact as "sexual intercourse or the touching of an intimate part of the patient for the purpose of sexual arousal, gratification, or abuse" and defines an intimate part of an individual as "the sexual organ, anus, groin, or buttocks of any person, and the breast of a female." Current statute does not allow necessary discipline for specific instances of egregious sexual acts and behavior, which prevents an administrative judge from issuing a revocation recommendation. The ALJ is forced to submit a recommendation of probation when revocation would be in the best interest of the client and general public. The Board and AJLs state they are unable to consider behaviors such as grooming and sexting, which have only recently become part of the conversation surrounding sexual misconduct. Since the law governing the Board is not clear regarding the manner sexual behaviors should be prosecuted and adjudicated, the Board has historically had to prosecute and adjudicate these cases as boundary violations. According to the Board, in most, if not all, instances of sexual misconduct, a licensee has already been sexually grooming and/or engaging in sexual behavior with their client before beginning a sexual relationship.

Current Related Legislation.

AB 1636 (Weber): Requires the Medical Board of California (MBC) to automatically revoke a license, or deny a petition to reinstate a license, for individuals who have committed certain acts of sexual abuse, misconduct, or relations with a patient, and broadens what prior sexual misconduct the MBC may consider as cause for denying an initial license. (Status: this bill is currently pending before the Senate Business and Professions Committee and is set for hearing on June 20, 2022.)

Prior Related Legislation.

SB 275 (Pan): Defined "sexual behavior" and clarified that an administrative law judge's finding of fact that sexual behavior occurred between a psychotherapist and client shall trigger an order for license revocation. (Note: In response to COVID and effort to protect frontline workers, this bill was substantially amended to address healthcare workers access to personal protective equipment. That version of the bill was signed by Governor Newsom on September 29, 2020)

AB 2968 (Levine, Chapter 778, Statutes of 2018): Updated the informational brochure "Professional Therapy Never Includes Sex" to include sexual behavior and requires a psychotherapist (or their employer) who becomes aware that a patient had alleged sexual behavior with a previous psychotherapist to provide and discuss with the client the above described informational brochure.

AB 2138 (Chiu & Low, Chapter 995, Statutes of 2018): Reduces barriers to licensure for individuals with prior criminal convictions by limiting a regulatory board's discretion to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years no longer eligible for license denial, with several enumerated exemptions.

ARGUMENTS IN SUPPORT:

The Board of Psychology (sponsor) writes in support: "The Board believes that sexual behavior in the psychotherapist-client relationship by the licensed professional is one of the most flagrant ethical violations possible, as it violates the duty of care inherent in a therapeutic relationship, abuses the trust of the client, and can create harmful, long-lasting emotional and psychological effects.

The Board wants to ensure that egregious sexual behavior with a client, sexual misconduct, and sexual abuse is unprofessional conduct that merits the highest level of discipline. Therefore, this proposal would add sexual behavior (inappropriate actions and communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse) with a client or former client to the list of what is considered unprofessional conduct that would give the ALJ the statutory authority in a proposed decision, to include an order of revocation. The proposal also adds clear definitions to the following sexual acts: sexual abuse, sexual behavior, sexual contact, and sexual misconduct."

REGISTERED SUPPORT:

Board of Psychology *(Sponsor)*

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1097 (Pan) – As Amended June 6, 2022

SENATE VOTE: 23-3

SUBJECT: Cannabis and cannabis products: labeling and advertisement

SUMMARY: Requires the packaging of cannabis goods to prominently feature a rotating series of warning labels about the health risks of cannabis use; requires all advertisements by cannabis businesses and services to also prominently feature those warnings; and requires the Department of Cannabis Control (DCC), in consultation with the Department of Public Health (CDPH), to create a brochure about safer cannabis use, which must then be provided to consumers by cannabis businesses.

EXISTING LAW:

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

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

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

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

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

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

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

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

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

   (BPC § 26120(c))

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

10) 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)

11) 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)

12) 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)

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

THIS BILL:

1) Beginning January 1, 2025, requires a rotating series of warning labels to be featured on nearly all cannabis or cannabis products, in addition to warnings already required.

2) Requires the new warning labels to cover at least one-third of the front or principal face of a product.

3) Requires that the warning be in the largest type that fits in that space, using at least 12-point black type whenever feasible.

4) Requires that the background for the warning be bright yellow.

5) Requires that each warning be accompanied with a pictorial or graphic element appropriate to the message.

6) Specifies that the following rotating warnings be equally divided across batches of products:

- *WARNING: Do not buy illegally sold cannabis as it is more likely to contain unsafe additives or harmful contaminants such as mold or pesticides.*

- *WARNING: Do not use if pregnant or breastfeeding. Exposure to cannabis during pregnancy may harm your baby's health, including causing low birth weight.*

- *WARNING: Cannabis use may contribute to mental health problems, including psychotic disorders such as schizophrenia. Risk is greatest for frequent users and when using products with high THC levels.*

- *WARNING: Cannabis use may contribute to mental health problems, including increased thoughts of suicide and suicide attempts. Risk is greatest for frequent users.*

- *WARNING: Driving while under the influence of cannabis is a DUI. Cannabis use increases your risk of motor vehicle crashes.*

- *WARNING: Not for Kids or Teens! Starting cannabis use young or using frequently may lead to problem use and, according to the U.S. Surgeon General, may harm the developing brain.*

- *WARNING: The higher the THC content, the more likely you are to experience adverse effects and impairment. THC may cause severe anxiety and disrupt memory and concentration.*

7) For inhaled cannabis products, additionally includes the following rotating warnings:

   - *WARNING: Smoking cannabis may make breathing problems worse.*

   - *WARNING: Prolonged use of cannabis products may cause recurrent, severe nausea and vomiting.*

8) For edible cannabis products, additionally includes the following rotating warning:

   - *WARNING: It can take up to 4 hours to feel the full effects from eating or drinking cannabis. Consuming more within this time period can result in more adverse effects that may require medical attention.*

9) Requires the DCC to publish proposed implementation regulations for the rotating warning requirement, including pictorial designs, on or before January 1, 2024, and publish final regulations on or before July 1, 2024.

10) Every five years beginning January 1, 2030, requires the DCC, in consultation with the CDPH and the University of California, including the University of California San Francisco Center for Tobacco Control Research and Education, to either recertify the rotating warnings or provide updated warning label language and designs that accurately reflect the state of the evolving science on cannabis health effects and on effective communication of health warnings.

11) Authorizes and recommends that the DCC use research funded through cannabis tax revenue to research to assess the efficacy of the warnings required by this section and approaches to identify future best practices for cannabis health warning labels that are most effective in changing knowledge and intent to consume or consumption, especially of youth and during pregnancy.

12) Allows cannabis or cannabis products manufactured before July 1, 2024 to be sold without the new labeling requirements until July 1, 2025.

13) Requires all print advertisements and written internet advertisement displays, including on mobile web and social media, promoting cannabis, cannabis products, or a cannabis brand that are purchased by a licensee, a cannabis service, or an advertiser on behalf of a licensee or cannabis service, to meet the following requirements:

a) Contain one of the pictorial or graphic elements created by the DCC for purposes of the bill's warning label requirements.

b) Contain one of the rotating warnings required by the bill for package labeling.

c) Cover at least 15 percent of the advertisement in the upper right corner and be oriented in the same direction as the principal text.

d) Have a bright yellow background.

14) Requires all radio advertisements promoting cannabis, cannabis products, or a cannabis brand to have one of the rotating warnings read aloud clearly at the same volume and pace as the rest of the advertisement.

15) Requires all television and video advertisements promoting cannabis, cannabis products, or a cannabis brand to have a rotating warning simultaneously read and legibly displayed on-screen with a yellow background.

16) Delays the effective date of the bill's advertising requirements until January 1, 2024.

17) Requires the DCC, in consultation with the CDPH, to create and post for public use a single-page flat or folded brochure that includes steps for safer use of cannabis, including starting with lower doses, care with delayed effects of edibles, and the bill's set of rotating health warnings.

18) Requires the brochure created by the DCC to be printed in a type size not smaller than 12 points.

19) Requires retailers and microbusinesses to print and distribute the DCC's pamphlet.

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

21) Beginning March 1, 2024, requires cannabis retailers and microbusinesses to provide each new consumer with the DCC's brochure at the time of first purchase or delivery and to have the brochures visibly available for other consumers at point of service.

22) Until the DCC's brochure is developed, requires cannabis retailers and microbusinesses to provide the consumer with a full-page flyer that includes the full text of the rotating warnings required for package labeling and advertisements, printed in at least 12-point type, at the time of first purchase or delivery.

23) Provides that the flier delivered prior to the creation of the DCC's brochure shall not include any advertising or promotional material and shall include the heading "Health Warning from the State of California."

24) Makes various findings and declarations in support the bills requirements, including a finding that current health warnings required for cannabis products are insufficient to clearly and effectively communicate well-established and pertinent health risks to consumers of cannabis.

FISCAL EFFECT: According to the Senate Committee on Appropriations, unknown total fiscal impact to the DCC likely ranging in the low hundreds of thousands of dollars.

COMMENTS:

Purpose. This bill is co-sponsored by the **Public Health Institute**, **Youth Forward**, and the **California Chapter of the American College of Emergency Physicians**. According to the author: "SB 1097 will incorporate the knowledge that medical professionals have learned since the proposition passed and will allow cannabis consumers to receive the latest, unbiased, information regarding health warnings and steps for safer use."

Background.

Brief History of Cannabis Regulation in California. California was the first state to make the consumption of cannabis lawful when voters approved Proposition 215, the Compassionate Use Act, in 1996. 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. Without a framework to provide for state licensure and regulation of cannabis providers, however, a proliferation of informally regulated collectives and cooperatives were largely left to the enforcement of local governments.

Cannabis's continued illegality under the federal Controlled Substances Act generated periodic enforcement action by the United States Department of Justice. In August of 2013, new guidance from the federal Department of Justice through a memorandum sent by Deputy Attorney General James M. Cole reiterated that enforcement against cannabis establishments in compliance with state laws would not be a priority. Federal prosecutors were urged under the Cole Memo to review cannabis cases on a case-by-case basis and consider whether a cannabis operation was in compliance with "strong and effective state regulatory and enforcement systems" prior to prosecution.

After several initial attempts to provide for greater state 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 of Cannabis Control 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 DCC has been the single entity responsible for administering and enforcing the majority of MAUCRSA. New regulations are currently pending to effectuate the consolidation and make additional policy changes to the regulation of cannabis.

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

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

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

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

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

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

This bill would place extensive new labeling requirements on packaging containing cannabis goods. In addition to all the information currently required for cannabis labels, including the warning statement mandated under MAUCRSA, this bill would require a series of rotating labels to be evenly applied across product batches. Warnings would include statements about the danger that cannabis use can contribute to mental health problems, additional warnings about consumption while pregnant or breastfeeding, and over a dozen other specified admonishments. In addition, these warnings would be required to cover at least one-third of the front of a product, in at least a 12-point black type, on a bright yellow background, and with an accompanying pictorial or graphic element appropriate to the message. The author believes that these more forceful warnings are necessary to adequately inform the public about the risks associated with cannabis use, as well as to discourage use by minors and certain high-risk populations.

Cannabis Advertising Restrictions. 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 the DCC's regulations governing advertisements placed in broadcast, cable, radio, print, and digital communications.

MAUCRSA imposes a number of additional advertising and marketing restrictions for cannabis businesses. First, the AUMA required all advertisements and marketing to accurately and legibly identify the licensee responsible for its content, which MAUCRSA provides must include the addition of a license number. Further, the AUMA required that "any advertising or marketing involving direct, individualized communication or dialogue controlled by the licensee shall utilize a method of age affirmation to verify that the recipient is 21 years of age or older prior to engaging in such communication or dialogue controlled by the licensee."

MAUCRSA places a series of specific prohibitions on forms of advertising and marketing by cannabis licensees. Cannabis licensees may not do any of the following:

- Advertise or market 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.

- Publish or disseminate advertising or marketing containing any statement concerning a brand or product that is inconsistent with any statement on the labeling thereof.

- Publish or disseminate 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.

- Advertise or market on a billboard or similar advertising device located on an Interstate Highway or on a State Highway which crosses the California border.

- Advertise or market cannabis or cannabis products in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products.

- Publish or disseminate advertising or marketing that is attractive to children.

- Advertise or market 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.

- Publish or disseminate advertising or marketing while the licensee's license is suspended.

In addition to these statutory requirements and prohibitions, the DCC's regulations include a number of additional provisions relating to cannabis advertising. Advertisements placed in broadcast, cable, radio, print, and digital communications may only be displayed after a licensee has obtained reliable up-to-date audience composition data demonstrating that at least 71.6 percent of the audience viewing the advertising or marketing is reasonably expected to be 21 years of age or older. These advertisements also may not depict images of minors, objects likely to be appealing to minors, or statements regarding free cannabis goods or giveaways.

The DCC's regulations also contain more specific requirements for outdoor advertising of cannabis, including billboards. The DCC requires that all outdoor signs must be affixed to a building or permanent structure. Prior cannabis regulations narrowed the AUMA's prohibition against advertising on a billboard located on a highway to prohibit only advertisements "within a 15-mile radius of the California border." On January 11, 2021, the San Luis Obispo Superior Court entered a summary judgement that this regulation was "clearly inconsistent with the Advertising Placement Statute, expanding the scope of permissible advertising to most of California's State and Interstate Highway system, in direct contravention of the statute." In response, the DCC issued a notice to licensees, informing them that "to comply with the law and regulations, licensees may not place new advertising or marketing on any interstate highway or state highway that crosses the California border."

This bill would place significant new requirements on all advertisements promoting "cannabis, cannabis products, or cannabis brands." Any advertisements purchased by either a licensed cannabis business or a business that "interfaces with consumers on behalf of licensees, including by providing a platform to locate retailers or request delivery" must now contain the same rotating warnings as the ones this bill would require be placed on packaging labels. For print and written internet advertisements, the warnings would have to cover at least 15 percent of the advertisement and be placed on a bright yellow background. For radio advertisements, the warnings must be "read aloud clearly at the same volume and pace as the rest of the advertisement." For television and video advertisements, the warnings would be "simultaneously read and legibly displayed on-screen with a yellow background."

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

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

This bill would require the DCC to create an educational pamphlet, in consultation with CDPH, aimed at educating consumers on many of the same topics that the DCC already covers in its public information materials. This brochure would be required to include steps for safer use of cannabis, including starting with lower doses and care with delayed effects of edibles. The brochure would also have to include all of the same rotating warnings that the bill would require for labels and advertisements. Cannabis retailers would then be required to print and distribute the DCC's pamphlet to their customers.

Current Related Legislation. AB 1894 (L. Rivas) would places additional requirements and restrictions for the packages and labels of integrated cannabis vaporizers, as well as for the advertisement and marketing of those products. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation. AB 273 (Irwin) from 2021 would have placed numerous restrictions on the content of outdoor advertising by cannabis businesses and required a licensing authority to suspend 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.*

AB 2899 (B. Rubio, Chapter 923, Statutes of 2018) prohibits a licensee from publishing or disseminating advertisements or marketing of cannabis and cannabis products while the licensee's license is suspended.

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, resulting in MAUCRSA.

ARGUMENTS IN SUPPORT:

The **Public Health Institute** is a co-sponsor of this bill, writing: "Building on years of tobacco warning research, including FDA commissioned work, the Food and Drug administration has used the science on best practices for health warnings to design strong, rotating, front-of-pack pictorial warnings that are required by law and will be finalized shortly for cigarettes in the U.S., and which provide an important model for cannabis. This front-of-pack prominent warning approach is already used in over 100 countries for tobacco. SB1097 would align with this evidence-based approach."

Youth Forward is another co-sponsor of this bill, writing: "Based on our extensive experience with supporting the development of young people and young adults, and on medical research, we are particularly concerned about the need for more consumer education regarding the risks to mental health associated with frequent use of high THC products. As you may know, the cannabis industry markets their products as therapeutic health aids and, while this is true for a very small number of conditions, it is not generally true. Unfortunately, as research shows, many young people and young adults view cannabis as harmless, and are not aware of health risks associated with use. Thus, we have come together as youth-serving organizations, public health leaders, and medical professionals to move this legislation forward, with the goal of expanding consumer education."

The **California Chapter of the American College of Emergency Physicians** (California ACEP) is also co-sponsoring this bill. According to California ACEP: "According to OSHPD data, emergency department visits with a cannabis related diagnoses as the primary cause of the visit increased ten-fold since 2005. These visits can be quite serious for patients as indicated by the fact that emergency department visits for cannabis associated psychosis/delirium or perceptual disturbances rose 54% between 2016 and 2019. The public is often unaware of the potential risks associated with cannabis and many incorrectly assume that because it has been legalized there are no adverse consequences. We support providing consumers with health information so that they can make informed choices."

ARGUMENTS IN OPPOSITION:

The **California Cannabis Industry Association** (CCIA) writes in opposition to this bill in a letter joined by numerous other licensed cannabis businesses. The CCIA's letter argues that the bill's requirements "would create an overly onerous and entirely unnecessary burden on legal cannabis businesses and do nothing to curb the illicit market, which produces unsafe, untested products." The CCIA further argues that "implementation of SB 1097 will make legal products more expensive by necessitating a complete overhaul of current packaging, with significant wasted materials sent to landfills. Higher costs to produce legal products will inevitably result in higher product prices. SB 1097 will only serve to incentivize customers to purchase cheaper cannabis from the illicit market, undermining consumer health and safety."

Veterans Cannabis Group, consisting of veterans who use medical cannabis, opposes this bill, writing: "Unfortunately, SB 1097 ignores the numerous medical benefits of cannabis use and instead falsely equates the products to cigarettes, imposing burdensome labeling requirements that will raise prices of legal products, pushing consumers like the veterans we represent to turn to the much more dangerous illicit market." The group's letter further argues that "SB 1097 would impose expensive and unnecessary labeling requirements on cannabis retailers, resulting in increased prices of cannabis products, and reduced entry into the market."

The Parent Company, also known as Caliva, opposes this bill, writing: "SB 1097 works against its own goals by squeezing so much warning information onto packages that are usually not much bigger than 2 inches by 3 inches." The Parent Company argues that "the warnings become white noise to consumers who no longer pay attention to critical consumer safety messages. The product becomes more expensive, especially if packaging must be enlarged to accommodate more messaging (not to mention dumping more packaging into landfills). Even more cost is added to the product by requiring the manufacturers to provide up to 10 separate different packages to accommodate the requirement for rotating warnings."

POLICY ISSUES:

Effectiveness and Appropriateness of Warnings Labels. The author argues that the series of rotating warnings that would be required for cannabis goods packaging labels would significantly improve public awareness of the health risks associated with cannabis use. The bill's sponsors argue that the similar use of warning labels on tobacco packing serves as a strong example of the effectiveness of this approach. In March of 2020, the federal Food and Drug Administration (FDA) issued a final rule requiring a similar series of rotating warning labels to be placed on cigarette packages and advertisements, with similar requirements for prominent placement.

The analogy of cigarette labeling is useful in that there has been extensive research into the value of warning labels as a way of educating the public. In one frequently cited study, which surveyed nearly 10,000 adult smokers across four countries, researchers found that cigarette smokers "exhibited significant gaps in their knowledge of the risks of smoking. Smokers who noticed the warnings were significantly more likely to endorse health risks, including lung cancer and heart disease. In each instance where labelling policies differed between countries, smokers living in countries with government mandated warnings reported greater health knowledge."[1] Another study found that recall of health information significantly improved when the warning label included a graphic image in addition to text.[2] However, a recent study of graphic warning labels on cigarette packs found while "graphic warning labels decreased positive perceptions of cigarettes," this result occurred "without clearly increasing health concerns," and that "placing graphic warning labels on US cigarette packs did not have an effect on smoking behavior" (though they may "enhance other tobacco control strategies").[3]

There is also mixed evidence as to whether warnings are effective to prevent adolescent smoking. One study found that greater knowledge of cigarette packaging warning labels were actually associated with higher levels of smoking, and that warning labels on advertisements did not significantly correlate with any change in smoking behavior.[4] It should be noted that while this study found that warning labels were ineffective for reducing adolescent use of tobacco products, the study predated newer requirements for graphic warning labels, which have been found to improve the effectiveness of warnings.

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[1] Hammond, David, et al. "Effectiveness of cigarette warning labels in informing smokers about the risks of smoking: findings from the International Tobacco Control (ITC) Four Country Survey." *Tobacco control* (2006).
[2] Strasser, Andrew A., et al. "Graphic warning labels in cigarette advertisements: recall and viewing patterns." *American journal of preventive medicine* 43.1 (2012).
[3] Strong, David R., et al. "Effect of Graphic Warning Labels on Cigarette Packs on US Smokers' Cognitions and Smoking Behavior After 3 Months: A Randomized Clinical Trial." *JAMA network open* 4.8 (2021).
[4] Robinson, Thomas N., and Joel D. Killen. "Do cigarette warning labels reduce smoking?: paradoxical effects among adolescents." *Archives of pediatrics & adolescent medicine* 151.3 (1997).

It could also be argued that cigarettes and other tobacco products are an imperfect comparison to cannabis goods. The United States government has an established policy interest in stopping tobacco use, and there are multiple federally funded campaigns to not just educate consumers about tobacco health considerations, but to discourage smoking and encourage cessation. This is also the case in California, where the CDPH's California Tobacco Control Program states that its focus is to make tobacco "less desirable, less acceptable and less accessible."

There has not been a similar government interest in preventing lawful cannabis use in the years since California voters chose to legalize the drug. While cannabis remains a Schedule I drug under the federal Controlled Substances Act, there has long been extensive recognition that cannabis actually has demonstrated medicinal *benefits*, which has been reflected in both congressional activities and federal guidance. While the CDPH's "Let's Talk Cannabis" campaign seeks to "increase awareness about cannabis and how it affects our bodies, minds and health," there is no active campaign to generally discourage use.

The health dangers associated with tobacco products are also more applicable to the general population than those associated with cannabis. According to the federal Centers for Disease Control and Prevention, smoking causes cancer, heart disease, stroke, lung diseases, diabetes, and chronic obstructive pulmonary disease, with every smoker possessing at least some risk of contracting one or more of these conditions. While the health risks of cannabis that this bill seeks to warn consumers about are certainly real and evidence-supported, many of them are limited to individuals with have preexisting conditions, including mental health disorders or pregnancy, and for whom education about cannabis use risks may be better delivered as part of their existing care and treatment for those conditions.

A product that may be more fairly comparable to cannabis would be alcohol. There is ample research that alcohol consumption poses many of the same risks as cannabis, including those involving contribution to mental health problems, consumption while pregnant or breastfeeding, and driving or operating heavy machinery while under the influence. However, there is not a comparable warning label requirement for alcohol products like there is for tobacco; in fact, the current warning label required for alcohol is arguably very similar to what MAUCRSA requires for cannabis:

> *"GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems."*

If comparisons to other regulated products are considered a cogent argument for imposing new requirements on cannabis labels and advertisements, it is unclear why the existing similarity between warnings placed on alcoholic and cannabis products should not be satisfactory, while tobacco—a more universally hazardous product—is subjected to stronger requirements.

Conflicting and Redundant Labels. While the Legislature is authorized to enact new laws that are consistent with the intent of the AUMA, substantive changes to or repeals of language passed through Proposition 64 could be deemed invalid if not approved by the voters. While this bill would revise labeling requirements for cannabis goods, it does not repeal or amend the current statements required by the initiative. This would result in conflicts and repetition between existing labeling requirements and the new labels that would be required under this bill.

For example, the warning required by Proposition 64 already requires labels on cannabis goods to state that "the intoxicating effects of cannabis products may be delayed up to two hours," whereas a rotating warning imposed under this bill would state that "it can take up to 4 hours to feel the full effects from eating or drinking cannabis." These messages, which would in some cases appear simultaneously on the same label, may be viewed as inconsistent and could cause confusion for consumers.

Proposition 64 also already requires a statement that "cannabis use while pregnant or breastfeeding may be harmful"; this would become redundant with the rotating warning under this bill stating: "Do not use if pregnant or breastfeeding. Exposure to cannabis during pregnancy may harm your baby's health, including causing low birth weight." Similarly, Proposition 64 requires the statement that "consumption of cannabis products impairs your ability to drive and operate machinery. Please use extreme caution." This is essentially the same message as the rotating warning that would be required in this bill to state that "driving while under the influence of cannabis is a DUI. Cannabis use increases your risk of motor vehicle crashes."

There are arguably additional redundancies with existing labeling language and this bill's rotating warnings. Both current requirements and this bill would discourage use or possession by minors. Additionally, there are already numerous policies and programs aimed at increasing awareness about the need to purchase cannabis from legal retailers; it is unclear what benefit there would be in duplicating this campaign through labels on products that presumably were already purchased legally.

What this bill would require that is not currently covered by any existing labeling requirements is information regarding the effect of cannabis consumption on specified mental health problems. For example, there is currently no requirement under MAUCRSA that cannabis labeling warn about the demonstrated interaction between THC and conditions such psychosis, schizophrenia, suicide ideation, anxiety, or memory and concentration loss. While scientific evidence about this link is still evolving and the best source of information for consumers would be directly from health professionals, there may be a stronger argument for the inclusion of information about mental health risks on the labels of cannabis goods.

First Amendment Considerations. When the FDA issued its graphic warning label requirements for cigarette advertisements and packages, representatives of the tobacco industry filed lawsuits to challenge the constitutionality of the rule. The complaints in both *Philip Morris v. FDA* and *R.J. Reynolds v. FDA* alleged that the labeling requirements violate the First Amendment as impermissible compelled speech. Similar lawsuits could potentially be filed in response to the requirements imposed by this bill, which are modeled after the FDA's rule for tobacco product labeling.

The Supreme Court of the United States established a test for determining whether the regulation of commercial speech violates the First Amendment of the Constitution in *Central Hudson Gas & Elec v. Public Service Comm of New York* 447 U.S. 557 (1980). In this case, the Court recognized commercial speech as constitutionally protected, but established a multi-pronged test for determining whether restrictions are permissible. In its decision, the Court ruled that in order for the government to limit commercial speech, it must pass intermediate scrutiny and each of the following must be demonstrated:

1) The government must have a substantial interest;

2) The regulation must directly and materially advance the government's substantial interest; and

3) The regulation must be narrowly tailored.

In this instance, the author would likely argue that the government's interest is in educating consumers about the health risks of cannabis use under certain circumstances. There is likely a strong argument that this interest is indeed substantial, and that the regulation would advance that interest. However, were this bill to result in litigation similar to what was filed in response to the FDA's rule for tobacco products, it is possible that the issue of its constitutionality would have to be definitively resolved by judicial decision.

AMENDMENTS:

1) To prevent duplicative and inconsistent labeling requirements, to refine the scope of the new warnings to information relating to mental health, and to provide the DCC with discretion to develop language consistent with the most recent scientific research in consultation with health experts, amend Section 3 of the bill to replace its contents with the following provisions:

   26121. *(a) In addition to the information required in Section 26120, the department shall, no later than July 1, 2025, adopt regulations to require cannabis and cannabis product labels and inserts to include a clear and prominent warning regarding the risks that cannabis use may contribute to mental health problems.*

   (b) The department shall consult with the State Department of Public Health and the University of California, as well as all additional stakeholders identified by the department during the rulemaking process, in its adoption of the regulations required by subdivision (a).

   (c)(1) On or before January 1, 2030, and every five years thereafter, the department, in consultation with the State Department of Public Health and the University of California, including the University of California San Francisco Center for Tobacco Control Research and Education, shall reevaluate the regulations adopted pursuant to subdivision (a) to determine whether requirements imposed in those regulations reflect the state of the evolving science on cannabis health effects and on effective communication of health warnings.

   (2) The Legislature recommends, and the department may, use research funded pursuant to subdivision (b) of Section 34019 of the Revenue and Taxation Code that evaluates labeling and packaging and, in conformance with the provisions of that subdivision, may commission new research to assess the efficacy of the warnings required by subdivision (a) and approaches to identify future best practices for cannabis health warning labels that are most effective in changing knowledge and intent to consume or consumption.

   (d) Cannabis or cannabis products manufactured before July 1, 2025, may be sold before July 1, 2026, without the labeling required in regulations adopted pursuant to subdivision (a).

2) To narrow the focus of the bill to the establishment of new labeling requirements for cannabis goods packaging, strike Section 4 from the bill.

3) To revise and realign the requisite contents of the pamphlet created by the DCC in consultation with the CDPH, amend Section 2 of the bill to read as follows:

26070.3. *(a)(1) On or before January 1, 2024, the department, in consultation with the State Department of Public Health, shall create and post for public use a single-page flat or folded brochure that includes steps for safer use of cannabis, including the following information:*

(A) Recommendations for new consumers to start with lower doses.

(B) Care with delayed effects of edibles, including warnings that it can take up to 4 hours to feel the full effects from eating or drinking cannabis and that consuming more within this time period can result in more adverse effects that may require medical attention.

(C) The dangers of purchasing illegally sold cannabis, including the increased risk that untested cannabis may contain unsafe additives or harmful contaminants such as mold or pesticides.

(D) Warnings against consuming cannabis while pregnant or breastfeeding and that exposure to cannabis during pregnancy may harm the baby's health, including causing low birth weight.

(E) The potential for cannabis use to contribute to mental health problems, including psychotic disorders such as schizophrenia and increased thoughts of suicide and suicide attempts, and that these risks are greatest for frequent users and when using products with high THC levels.

(F) The link between higher THC content and the likelihood of experiencing adverse effects and impairment, including severe anxiety and the disruption of memory and concentration.

(G) Cautions that driving while under the influence of cannabis is a DUI and that cannabis use increases the risk of motor vehicle crashes.

(H) Any evidence that starting cannabis use at a young age or using frequently may lead to problem use and may harm the developing brain.

(I) That smoking cannabis may make breathing problems worse and that prolonged use of inhaled cannabis products may cause recurrent, severe nausea, and vomiting.

(2) The brochure shall be printed in a type size not smaller than 12 points. Printing and distribution shall be the responsibility of the retailer or microbusiness.

(3) On or before January 1, 2030, and every five years thereafter, the department shall either recertify the information in the brochure or provide updated language that accurately reflects the state of the evolving science on cannabis health effects and safer use of cannabis. The review of the brochure shall be done in conjunction with the review required in paragraph (1) of subdivision (c) of Section 26121.

(b) On and after March 1, 2024, a retailer or microbusiness selling, or person delivering, cannabis or cannabis products to a consumer shall offer each new consumer a copy of the brochure created pursuant to subdivision (a) at the time of first purchase or delivery and shall have the brochures visibly available for other consumers at point of service.

REGISTERED SUPPORT:

California Chapter of The American College of Emergency Physicians *(Co-Sponsor)*
Public Health Institute *(Co-Sponsor)*
Youth Forward *(Co-Sponsor)*
Alcohol Justice
American Academy of Pediatrics, California
American College of Obstetricians and Gynecologists District IX
Artia Strategies
Asian American Drug Abuse Program
Be the Influence
California Association of Alcohol and Drug Program Executives
California Society of Addiction Medicine
Coalition for Drug Free Escondido
Coastal Communities Drug Free Coalition
Community Coalition
County Behavioral Health Directors Association of California
County of Santa Clara
Day One
Drug Induced Homicide
East Bay Asian Youth Center
Eden Youth and Family Center
Empower Watsonville
First 5 Sacramento
Funding the Next Generation
Future Leaders of America
Helpline Youth Counseling
Hermosa Coalition for Drug-free Kids
Institute for Public Strategies
Kaiser Permanente
Khmer Girls in Action
Liberty Hill Foundation
Los Angeles Drug and Alcohol and Policy Alliance
The Los Angeles Trust for Children's Health
Marin Residents for Public Health Cannabis Policies
Marin4publichealth.org
Moms Strong
Monterey County Prescribe Safe Initiative
North Coastal Prevention Coalition
Organization for Justice and Equality
Pro Youth and Families
Public Health Advocates
Pueblo Y Salud
Red Road Program
Restoring Justice for Indigenous Peoples
Rio Vista Alliance
Ryse Center
Sacramento Youth Center
Safelaunch

San Dieguito Alliance for Drug Free Youth
San Marcos Prevention Coalition
Say San Diego
SBCS Corporation
Select Fiduciary Group
Shasta and Siskiyou County Citizens Against Marijuana
Sigma Beta Xi
Social Model Recovery Systems
South East Community Alliance
Take Back America Campaign
Volunteers of America of Los Angeles
The West Contra Costa Alcohol Policy Coalition

REGISTERED OPPOSITION:

ALG Strategies
Anthony Law Group
Austin Legal Group
Autumn Brands
The Bay Area Council
Big Sur Farmers Association
Body and Mind
California Cannabis Industry Association
California Cannabis Manufacturers Association
California NORML
The Cannabis Chamber of Commerce
Cannabis Connect Insurance Services
Cannabis Distribution Association
Cannacraft
Cann.Dev
Canopy Growth
CARP Growers
Columbia Care
Cresco Labs
Cronos Group
Davis Wright Tremaine
Eaze
Eden Enterprises
Emerald Scientific
Finkle Law Office
Flow Cannabis Co.
Gelato
Good Farmers Great Neighbors
GrowBIG Commercial Growers Supply
Harborside
Headset
The Higher Path
Humboldt County Growers Alliance
Jetty Extracts

Khemia
Kiva Confections
Legal Cannabis For Consumer Safety
Los Angeles County Business Federation (BIZ-FED)
Mammoth Distribution
McDowell & Associates
Mendocino Cannabis Alliance
MMLG, LLC
Moxie
Nabis
Nevada County Cannabis Alliance
Nine Point Strategies
Norcal Cannabis Company
North American Cannabis Registry
Origins Council
The Parent Company
Pax
People's California
Ringgenberg Law Firm
SC Labs
Seed to Sale Consulting
Seven Leaf
Shryne Group
Sonoma County Growers Alliance
SPARC
Stone Road
Trinity County Agricultural Alliance
Veda Scientific
Veterans Cannabis Group
Weed For Warriors Project
Weedmaps
West Coast Cure
WYLD Canna

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

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1087 (Gonzalez) – As Amended May 19, 2022

SENATE VOTE: 38-0

SUBJECT: Vehicles: catalytic converters

SUMMARY: Prohibits any person from purchasing a used catalytic converter, including for the purpose of dismantling, recycling, or smelting, except from specified sellers, and makes a violation punishable as an infraction.

EXISTING LAW:

1) Requires a core recycler who accepts a catalytic converter for recycling to maintain a written record of the following:

    a) The place and date of each sale or purchase of a catalytic converter made in the conduct of his or her business as a core recycler;

    b) The name, valid driver's license number, and state of issue, or California-issued identification number, of the seller of the catalytic converter and the vehicle license number, including state of issue of a motor vehicle used in transporting the catalytic converter to the core recycler's place of business; if the seller is a business, the written record shall include the name, address, and telephone number of the business;

    c) A description of the catalytic converters purchased or sold, including the item type and quantity, amount paid for the catalytic converter, identification number, if any, and the vehicle identification number; and

    d) A statement indicating either that the seller of the catalytic converter is the owner of the catalytic converter, or the name of the person from whom he or she has obtained the catalytic converter, including the business, if applicable, as shown on a signed transfer document. (BPC § 21610(b))

2) Requires a core recycler engaged in the selling or shipping of used catalytic converters to other recyclers or smelters to retain information on the sale that includes all of the following:

    a) The name and address of each person to whom the catalytic converter is sold or disposed of;

    b) The quantity of catalytic converters being sold or shipped;

    c) The amount that was paid for the catalytic converters sold in the transaction; and,

    d) The date of the transaction. (BPC § 21610(c))

3) Prohibits a core recycler from providing payment for a catalytic converter unless all of the following requirements are met:

    a) The payment is made by check and provided to the seller by either of the following:

        i) Mailed to the seller at the address provided;

        ii) Mailed to the seller's business address, for a seller that is a business;

        iii) Collected by the seller from the recycler on the third business day after the date of sale; or

        iv) By immediate payment by check, debit card, or credit card, if the seller is a business that has a contract with a core recycler or is a licensed auto dismantler.

    b) The core recycler obtains:

        i) A clear photograph or video of the seller at the time of sale;

        ii) A copy of the valid driver's license of the seller or the seller's agent containing a photograph and an address of the seller or the seller's agent, or a copy of a state or federal government issued identification card containing a photograph and an address of the seller or the seller's agent;

        iii) A clear photograph or video of the catalytic converter being sold; and

        iv) A written statement from the seller indicating how the seller obtained the catalytic converter. (BPC § 21610(d))

4) Specifies that if the seller prefers to have the check for the catalytic converter mailed to an alternative address, as defined, the core recycler shall obtain a copy of a driver's license or identification card and a gas or electric utility bill addressed to the seller at the alternative address, as specified. (*Id.*)

5) Exempts a core recycler that buys catalytic converters, transmissions, or other parts removed from a vehicle from the payment requirements in (3) above if the core recycler and the seller have a written agreement for the transaction. (BPC § 21610(e))

6) Specifies that core recyclers accepting catalytic converters from licensed auto dismantlers or from recyclers who hold a written agreement with a business that sells catalytic converters for recycling purposes are required to collect only the following information:

    a) Name of seller or agent acting on behalf of the seller.

    b) Date of transaction.

    c) Number of catalytic converters received in the course of the transaction.

d) Amount of money that was paid for catalytic converters in the course of the transaction. (BPC § 21610(f))

7) Requires a core recycler to keep and maintain the information required by law for no less than two years, and to make the information available for inspection by local law enforcement upon demand. (BPC §§ 21610(g) and (h))

8) States that a person who makes, or causes to be made, a false or fictitious statement regarding any information required by law, or who violates a requirement of the law, is guilty of a misdemeanor. (BPC §§ 21610(i) and (j))

9) Sets forth the following punishments upon conviction for persons who knowingly and willfully violate the aforementioned requirements as follows:

   a) A fine of $1,000 for a first conviction.

   b) A fine of not less than $2,000 for a second conviction.

   c) A fine of not less than $4,000 for a third and subsequent conviction. (BPC § 21610(k))

10) Authorizes a court to order the defendant to cease engaging in the business of a core recycler for a period not to exceed 30 days for a second conviction, and for a period not less than one year for a third and subsequent conviction, in addition to any fines imposed. (BPC § 21610(k))

11) Specifies that the requirements of this bill apply to core recyclers and not to a subsequent purchaser of a catalytic converter who is not a core recycler. (BPC § 21610(l))

12) Specifies that the provisions above do not apply to a core recycler who holds a written agreement with a business or recycler regarding the transactions. (BPC § 21610(l))

13) Defines “core recycler” as a person or business, including a recycler or junk dealer, that buys used individual catalytic converters, transmissions, or other parts previously removed from a vehicle; however, a person or business that buys a vehicle that may contain these parts is not a “core recycler.” (BPC § 21610(a))

THIS BILL:

1) Prohibits a core recycler from providing payment for a catalytic converter unless the seller is a person described below:

   a) A licensed automobile dismantler.

   b) A core recycler that maintains a fixed place of business.

   c) A motor vehicle manufacturer, dealer, or licensed lessor-retailer.

   d) A licensed automotive repair dealer.

e) Any other licensed business that may reasonably generate, possess, or sell used catalytic converters.

f) An individual possessing documentation that they are the lawful owner of the used catalytic converter, including, but not limited to, a certificate of title or registration identifying the person as the legal or registered owner of the vehicle from which the catalytic converter was detached that matches the VIN, and the date that the catalytic converter was removed from the vehicle as permanently marked on the catalytic converter.

2) Makes the purchase of a catalytic converter from anyone other than those specified above punishable as an infraction by a $1,000 fine for a first offense, a $2,000 fine for a second offense, and a $4,000 fine for a third or subsequent offense.

3) Defines "permanently marked" to mean prominently engraved, etched, or written in permanent ink on the exterior case of the catalytic converter.

4) Defines "used catalytic converter" to mean a catalytic converter that has been previously installed on a vehicle and has been detached. It does not include a reconditioned or refurbished catalytic converter being sold at retail.

5) Makes technical and nonsubstantive changes.

FISCAL EFFECT: According to the Senate Appropriations Committee: "Unknown workload cost pressures on the courts to adjudicate charges that are brought under the provisions of this bill (Trial Court Trust Fund, General Fund)."

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author,

> Californians have been largely affected by the rise of catalytic converter theft. These thefts have more than tripled since the initial stay-at-home orders due to the COVID-19 pandemic based on reports by the National Insurance Crime Bureau. Catalytic converters have become a precious possession due to their highly valuable metals, like palladium and rhodium. Individuals looking to make a quick buck can make hundreds of dollars selling them to auto parts suppliers or scrapyards.
>
> Victims of catalytic converter theft are left with the cost of replacing their catalytic converter, which can run over $2,000. This has become economically challenging for many Californians but especially for low-income individuals who rely on only one car for their whole family.
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> SB 1087 will address catalytic converter theft by prohibiting the purchase of detached catalytic converters unless it is purchased from the owner of the vehicle the catalytic converter was removed from, or from an automobile manufacturer, dealer, dismantler, auto repair specialist, or any other business that generates,

possess, or sells used catalytic converters. The bill would make a violation of this law and infraction punishable with a fine between $1,000-4,000. Furthermore, SB 1087 would prohibit a core recycler from purchasing a catalytic converter from anyone other than automobile dismantlers, auto repair dealers, or an individual possessing documentation that they are the lawful owner of the catalytic converter. This measure takes a preventing approach by creating a barrier for people selling detached catalytic converters in the black market.

Background.

Catalytic converters. Catalytic converters are devices that reduce pollution-causing emissions. Since 1975, all vehicles produced in the United States must have a catalytic converter as part of the exhaust system to help reduce contaminants from the exhaust. The precious metals inside act as catalysts; when hot exhaust enters the converter, a chemical reaction occurs that renders toxic gases, such as carbon monoxide and hydrocarbons, into less harmful emissions.

According to the National Insurance Crime Bureau (NICB), rhodium was valued at $14,500 per ounce, palladium was valued at $2,336 per ounce, and platinum was valued at $1,061 per ounce of platinum, as of December 2020. Catalytic converters can be melted down to extract these precious metals, making them easy and popular targets for theft.

Vehicles that sit higher from the ground, such as trucks, pick-ups, and sports utility vehicles, are particularly vulnerable to catalytic converter theft because thieves can slide underneath without having to jack up the vehicle to gain access to the catalytic converter. With a battery-powered saw, a catalytic converter can be removed in less than a minute. Stolen catalytic converters can be worth several hundred dollars.

Based on a study of reported thefts, NCIB found that there were approximately 1,203 thefts of catalytic converters per month in 2020 compared to 108 per month in 2018. Over the three-year period, the highest number of thefts occurred in California, followed by Texas, Minnesota, North Carolina, and Illinois. The frequency of thefts has accelerated throughout the COVID-19 pandemic.

Current Related Legislation.

AB 1622 (Chen) would have required the Department of Consumer Affairs to provide a licensed smog check station with a sign informing customers about strategies for deterring catalytic converter theft, including the etching of identifying information on the catalytic converter, and require the sign to be posted conspicuously in all licensed smog check stations in an area frequented by customers. The bill would have also authorized stations where licensed smog check technician repairs are performed to offer and recommend to customers the etching as an optional service provided in conjunction with the smog check. *Never heard in the Assembly Transportation Committee.*

AB 1659 (Patterson) would have revised the definition of an "automobile dismantler" to include a person who keeps or maintains two or more used catalytic converters that are not attached to a motor vehicle on property owned by the person, or under their possession or control, for specified purposes. *Never heard in the Assembly Transportation Committee.*

AB 1984 (Choi) would have prohibited the purchase, sale, receipt, or possession of a stolen catalytic converter, as specified. The bill specifies that a peace officer would need not have actual knowledge that the catalytic converter is stolen to establish probable cause for arrest, and that for prosecution, circumstantial evidence may be used to prove the stolen nature of the catalytic converter. *Never heard in the Assembly Transportation Committee.*

AB 2398 (Villapudua) would have made possession of a detached catalytic converter a wobbler, punishable by imprisonment in a county jail for not more than one year, or in the county jail for 16 months, or two, or three years. *Failed passage in the Assembly Public Safety Committee.*

AB 2407 (O'Donnell) would require a core recycler to report specified information about the purchase and sale of catalytic converters to the chief of police or the sheriff, as prescribed, and to request to receive theft alert notifications regarding the theft of catalytic converters from a specified theft alert system. The bill would also require a core recycler to obtain the thumbprint of a seller of a catalytic converter and to preserve the thumbprint for a period of 2 years. The bill would limit the inspection or seizure of a thumbprint to that performed by law enforcement pursuant to a criminal search warrant based upon probable cause. *Pending in the Senate Business, Professions, and Economic Development Committee.*

AB 2682 (Gray) would require any automotive repair dealer that installs or replaces a catalytic converter on a motor vehicle to ensure that the catalytic converter is permanently marked with the vehicle identification number of the vehicle on which it is being installed. The bill would require a smog check station to inspect the exterior of the catalytic converter, if any, of the vehicle being tested and notify the customer whether or not the catalytic converter is engraved, etched, or otherwise permanently marked with the last five digits of the vehicle identification number. The bill would also prohibit any person, except as exempted, from removing, altering, or obfuscating the vehicle identification number engraved, etched, or otherwise marked on a catalytic converter, or from knowingly possessing a catalytic converter that has been so altered. The bill prohibits a manufacturer from delivering a new vehicle assembled after January 1, 2024, unless the catalytic converter, if there is one, has been permanently marked with the vehicle identification number of the vehicle. *Pending in the Senate Business, Professions, and Economic Development Committee.*

SB 919 (Jones) would have prohibited a core recycler from purchasing or otherwise receiving any catalytic converter that is not engraved, etched, or otherwise permanently marked with the vehicle identification number of the vehicle that it was removed from. The bill would have required a core recycler to maintain a log that includes a description of all catalytic converters purchased or received by the core recycler, as specified. The bill would have prohibit a person from buying, selling, receiving, or possessing a stolen catalytic converter as well as removing, altering, or obfuscating a vehicle identification number or other unique marking that has been added to a catalytic converter. This bill would have prohibit a dealer or retail seller from selling a motor vehicle equipped with a catalytic converter unless the catalytic converter has been engraved, etched, or otherwise permanently marked with the vehicle identification number of the vehicle to which it is attached. *Failed passage in Senate Public Safety Committee.*

SB 986 (Umberg and Portantino) would, in part, prohibit a dealer or retailer from selling a new motor vehicle equipped with a catalytic converter unless the catalytic converter has been

engraved or etched with the vehicle identification number of the vehicle to which it is attached. *Pending in the Assembly Transportation Committee.*

Prior Related Legislation.

SB 627 (Calderon), Chapter 603, Statutes of 2009, requires core recyclers, as defined, to comply with additional recordkeeping and identification procedures and new payment restrictions when purchasing catalytic converters.

ARGUMENTS IN SUPPORT:

The *Alliance for Automotive Innovation* writes in support:

> Catalytic converter theft has drastically risen throughout the state and has become an increasingly harmful burden on auto owners. More than 8,000 Californians reported having their catalytic converter stolen in the first five months of 2021, which is a 33 percent increase from 2020 and a massive 380 percent increase from 2019.
>
> [This bill] aims to address all the factors that have led to the increase in catalytic converter theft by prohibiting the purchase of a detached catalytic converter unless it is purchased from the owner of the vehicle the catalytic converter was removed from, or from an automobile manufacturer, dealer, dismantler, auto repair specialist, or any other business that generates, possesses, or sells used catalytic converters. Additionally, this bill would make the violation of this law punishable by a fine between $1,000 and $4,000.

The *California District Attorneys Association* writes in support:

> Catalytic converter theft has become an increasingly alarming problem in communities across the state. Catalytic converter thefts were up 175% from July 1, 2020, to June 30, 2021, according to records from State Farm Insurance claims alone. The theft itself is often committed within minutes and the stolen catalytic converter, often devoid of any identifying information, is then typically sold to a core recycler for a significant profit. This makes enforcement and prosecution of catalytic converter theft extremely difficult, if not impossible, unless the perpetrator is caught in the act.
>
> By requiring core recyclers to maintain an updated log describing each catalytic converter that it purchased pursuant to a written agreement and by narrowing the scope of people core recyclers are permitted to purchase catalytic converters from, this bill provides law enforcement and prosecutors with important tools that are necessary to discourage and prevent the growing crime of catalytic converter theft.

The *Automobile Club of Southern California* and *AAA Northern California, Nevada, & Utah* write in support:

In 2009, SB 627 (Calderon) was passed, placing in law the requirement that core recyclers comply with certain recordkeeping and identification procedures and payment restrictions when purchasing catalytic converters. SB 627 sought to discourage thieves by placing several restrictions and requirements on recyclers who accept catalytic converters for recycling purposes. SB 1087 takes this a step further by ensuring a closed system for the sale and purchase of a catalytic converter. While SB 627 had focused on those purchasing the catalytic converters, SB 1087 focuses on the sellers. SB 1087 states that only certain specified individuals or entities can be the seller of a catalytic converter and that core recyclers may only purchase catalytic converters from those specified individuals or entities. By closing this system for the sale and purchase of catalytic converters, SB 1087 will assist in deterring their theft; thus, we respectfully urge your support of this bill.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Alliance for Automotive Innovation
Auto Club of Southern California (AAA)
California District Attorneys Association
California Vanpool Authority
League of California Cities

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1186 (Wiener) – As Amended April 25, 2022

NOTE: This bill is double-referred and if passed by this Committee will be referred to the Assembly Committee on Judiciary.

SENATE VOTE: 22-9

SUBJECT: Medicinal Cannabis Patients' Right of Access Act

SUMMARY: Prohibits local governments from banning, or effectively banning, the delivery of medicinal cannabis to patients or their primary caregivers within their jurisdictions, enforceable through an action for writ of mandate; and exempts the repeal or adoption of local regulations, as necessary to allow for the operation of medicinal cannabis businesses, from the California Environmental Quality Act (CEQA).

EXISTING LAW:

1) Enacts the Compassionate Use Act of 1996, which first allowed patients to engage in the medical use of cannabis, and for patients and their primary caregivers to cultivate and possess medicinal cannabis, without being subject to criminal prosecution or punishment. (Health and Safety Code (HSC) §§ 11362.5 *et seq.*)

2) 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.*)

3) Defines "local jurisdiction" as a city, county, or city and county. (BPC § 26001)

4) 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)

5) 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)

6) Provides the DCC with authority for issuing 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)

7) Until June 30, 2022, gives the DCC discretion to issue provisional licenses to applicants who are not yet in compliance with CEQA but who provide evidence that compliance is underway, with specific criteria for demonstrating progress. (BPC § 26050.2)

8) Prohibits the DCC from approving an application for a state cannabis license if approval of the state license will violate the provisions of any local ordinance or regulation. (BPC § 26055)

9) Defines "delivery" as the commercial transfer of cannabis or cannabis products to a customer, including the use by a retailer of any technology platform. (BPC § 26001(o))

10) Defines "M-license" as a state license issued under MAUCRSA for commercial cannabis activity involving medicinal cannabis. (BPC § 26001(af))

11) Defines "medicinal cannabis" or "medicinal cannabis product" as goods intended to be sold or donated for use pursuant to the Compassionate Use Act of 1996 by a medicinal cannabis patient in California who possesses a physician's recommendation, or in compliance with any compassionate use, equity, or other similar program administered by a local jurisdiction. (BPC § 26001(ai))

12) Requires the DCC to establish minimum security and transportation safety requirements for the commercial distribution and delivery of cannabis and cannabis products. (BPC § 26070)

13) Allows licensed cannabis retailers to donate free cannabis or cannabis products to medicinal cannabis patients who have difficulty accessing cannabis or cannabis products, under certain conditions. (BPC § 26071)

14) Allows only a licensed retailer, microbusiness, or nonprofit to engage in cannabis delivery. (BPC § 26090(a))

15) Requires all licensees engaged in delivery to carry a copy of the licensee's current license and a government-issued photo identification, which must be presented upon request to state and local law enforcement or regulators upon request. (BPC § 26090(b))

16) Requires a licensee engaged in delivery as well as a customer requesting a delivery to maintain a copy of the delivery request and make it available upon request of the licensing authority and law enforcement officers. (BPC § 26090(c); § 26090(d))

17) Prohibits a local jurisdiction from preventing delivery of cannabis or cannabis products on public roads by a licensee acting in compliance with state and local law. (BPC § 26090(e))

18) Allows for the sale of cannabis goods to a person who is 18 years of age or older who possesses a valid medical identification card or a valid physician's recommendation for themselves or for a person for whom the person is a primary caregiver. (BPC § 26140)

19) 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)

20) Establishes CEQA, a process through which environmental impact reports are prepared to identify the significant effects on the environment of discretionary projects proposed to be carried out or approved by public agencies, to identify alternatives to those projects, and to indicate the manner in which those significant effects can be mitigated or avoided; provides for various specific exemptions from this process. (Public Resources Code §§ 21000 *et seq.*)

THIS BILL:

1) Prohibits a local jurisdiction from adopting or enforcing any regulation that prohibits the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers.

2) Additionally prohibits a local jurisdiction from adopting or enforcing any regulation that has the effect of prohibiting the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers by medicinal cannabis businesses in a timely and readily accessible manner, and in types and quantities that are sufficient to meet demand from medicinal cannabis patients within the local jurisdiction.

3) Expressly prohibits regulation of any of the following, to the extent that regulation has the effect of prohibiting the retail sale by delivery of medicinal cannabis:

    a) The number of medicinal cannabis businesses authorized to operate in the local jurisdiction.

    b) The operating hours of medicinal cannabis businesses.

    c) The number or frequency of sales by delivery of medicinal cannabis.

    d) The types or quantities of medicinal cannabis authorized to be sold by delivery.

    e) The establishment of physical premises from which retail sale by delivery of medicinal cannabis within the jurisdiction is conducted.

4) Clarifies that the bill does not prohibit the adoption or enforcement of reasonable regulations on retail sale by delivery of medicinal cannabis, including, but not limited to, reasonable regulations related to:

    a) Zoning requirements that are not inconsistent with the prohibition against banning medicinal cannabis delivery; if compliance with that prohibition would otherwise require a local jurisdiction to authorize a physical premises from which retail sale by delivery of medicinal cannabis within the jurisdiction is conducted, that requirement would not be altered.

    b) Security or public health and safety requirements.

    c) Licensing requirements.

    d) The imposition, collection, and remittance of any applicable state or local taxes upon retail sales occurring within the local jurisdiction.

5) Clarifies that the bill does not limit or otherwise affect the ability of a local jurisdiction to adopt or enforce any regulations on commercial cannabis operations other than retail sale by delivery of medicinal cannabis in the local jurisdiction.

6) Delays the effective date of the bill's provisions relating to the prohibition against bans on medicinal cannabis delivery until January 1, 2024.

7) Beginning January 1, 2024, provides that the bill's provisions may be enforced by an action for writ of mandate by any of the following beneficially interested parties:

    a) A medicinal cannabis patient or their primary caregiver who seeks to purchase medicinal cannabis or medicinal cannabis products within the local jurisdiction.

    b) A medicinal cannabis business that seeks to offer medicinal cannabis for sale within the local jurisdiction.

    c) The Attorney General.

    d) Any other party otherwise authorized by law.

8) Clarifies that the bill's provisions authorizing enforcement by an action for writ of mandate does not limit the availability of any other remedy otherwise available to enforce the law, and that the existence of any other remedy does not restrict the availability of relief.

9) Explicitly provides that the bill does not limit or otherwise affect the ability or right of a local jurisdiction to regulate adult-use cannabis.

10) Exempts from CEQA either of the following:

    a) The repeal of any local ordinance, regulation, or rule prohibiting the operation of medicinal cannabis businesses.

    b) The adoption of any local ordinance, regulation, or rule providing for discretionary review and approval of any local permits, licenses, or other local authorizations to engage in retail sales by delivery of medicinal cannabis or medicinal cannabis products conducted by businesses engaged in delivery from premises within the local jurisdiction, on the condition that the discretionary review provided for by that local ordinance, regulation, or rule includes any applicable environmental review required by CEQA.

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

COMMENTS:

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

> "Senate Bill 1186 provides Californians with access to safe and tested medical cannabis by requiring local jurisdictions to allow the sale of medical cannabis products by delivery. The bill only applies to delivery and only applies to medical cannabis. Moreover, this bill does not amend or in any way change Prop 64 and does not in any way subvert the will of the voters who supported Prop 64. Under SB 1186, jurisdictions may not prohibit the sale of medical cannabis and can remain in compliance with this bill by limiting the sale of medical cannabis to delivery only. SB 1186 also prohibits local jurisdictions from enacting restrictions on businesses providing medical cannabis products to patients and caregivers that have effect of prohibiting sales. SB 1186 respects the voters' intent, fixes a mistake made by the Legislature when consolidating medical and adult-use cannabis under one regulatory framework, and ensures that Californians have timely and convenient access to safe, effective, and affordable medicinal cannabis and cannabis products."

Background.

History of Medicinal Cannabis Regulation in California. While the federal illegality of cannabis has historically limited clinical research, cannabis has long been believed to have therapeutic value and has been used as medicine by numerous cultures. Cannabinoids contained within the plant, including tetrahydrocannabinol (THC), have been demonstrated to be effective at treating chemotherapy-induced nausea, chronic pain, anorexia, and other conditions. During the height of the AIDS crisis in San Francisco in the 1980s, cannabis was commonly ingested to help alleviate the effects of wasting syndrome, with activists like "Brownie Mary" Rathbun and Dennis Peron championing access to the plant for patients. In 1995, the Legislature passed AB 1529 (Vasconcellos) to establish a medical necessity defense for patients using cannabis with a physician's recommendation; this bill was vetoed by Governor Pete Wilson.

Subsequently, in 1995, California became the first state to make the consumption of cannabis lawful when voters approved Proposition 215, the Compassionate Use Act, in 1996. Proposition 215 protected patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. The initiative prohibited physicians from being punished or denied any right or privilege for making a medicinal cannabis recommendation to a patient. Proposition 215 also included findings and declarations encouraging the federal and state governments to implement a plan to provide for the safe and affordable distribution of cannabis to patients with medical needs.

The regulatory scheme for medicinal cannabis was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program (MMP.) Under the MMP, qualified patients were eligible to obtain a voluntary medical marijuana patient card, which could be used to verify that the patient or a caregiver had authorization to cultivate, possess, transport, or use medicinal cannabis. The MPP's identification cards were intended to help law enforcement officers identify and verify that cardholders were allowed to cultivate, possess, or transport limited amounts of cannabis without being subject to arrest. The MMP also created protections for qualified patients and primary caregivers from prosecution for the formation of collectives and cooperatives for medicinal cannabis cultivation.

Without the adoption of a formal framework to provide for state licensure and regulation of medicinal cannabis, a proliferation of informally regulated cannabis collectives and cooperatives were largely left to the enforcement of local governments. As a result, a patchwork of local regulations was created with little statewide involvement. More restrictive laws and ordinances by cities and counties were ultimately upheld by the California Supreme Court in *City of Riverside v. Inland Empire Patients* (2013) 56 Cal. 4th 729, which held that state law did not expressly or implicitly limit the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medicinal cannabis be prohibited from operating within its borders.

Cannabis collectives operating in compliance with Proposition 215 assumed they would be safe under federal guidance suggesting leniency toward states that had authorized the medical use of marijuana. However, United States Attorneys subsequently engaged in a series of raids against medical marijuana dispensaries. In February of 2011, U.S. Attorney Melinda Haag sent a letter to the City of Oakland asserting that her office would "enforce the Controlled Substances Act vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law."

In response to the federal government's enforcement activities, California Attorney General Kamala D. Harris assessed whether the state's medical marijuana guidelines could be clarified to reduce exploitation by criminal enterprises, reassure legitimate actors, and avert further crackdowns. However, it was ultimately determined that the state's legislative scheme for cannabis needed greater overhaul. In December of 2011, the Attorney General sent letters to the Senate President pro Tem and Assembly Speaker urging legislation to "reform, simplify, and improve" state law.

After several 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 consisted of a package of legislation: AB 243 (Wood); AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood); and SB 643 (McGuire). 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 to be administered by a newly established Bureau of Cannabis Control (BCC) within the Department of Consumer Affairs, the California Department of Public Health (CDPH), and the California Department of Food and Agriculture (CDFA), with implementation relying on each agency's area of expertise.

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.

Proposition 64 and MAUCRSA. 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 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 DCC has been the single entity responsible for administering and enforcing the majority of MAUCRSA. New regulations announced by the DCC are currently pending to effectuate the consolidation and make additional policy changes to the regulation of cannabis.

Local Control of Cannabis Delivery. MCRSA originally defined "delivery" as "the commercial transfer of medical cannabis or medical cannabis products from a dispensary," including use of a technology platform. "Transport" was separately defined as "the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity." This distinction separated out the concept of delivery as a transaction between a dispensary and a patient from the concept of cannabis exchanging hands between licensed entities. MCRSA further outlined how deliveries of cannabis goods could be carried out, explicitly stating that delivery could only occur when "made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance." In other words, MCRSA clearly authorized a local jurisdiction to ban cannabis delivery within its borders.

With the passage of the AUMA, many provisions of MCRSA were repealed and replaced through reconciliation efforts in MAUCRSA. The AUMA expressly stated that "a local jurisdiction shall not prevent delivery of cannabis or cannabis products on public roads" by licensees complying with state and local law. This language created a persistent ambiguity as to whether the initiative's prohibition on local jurisdiction actions was intended to prevent bans on "delivery" as originally defined under MCRSA, or if it was intended to prevent bans on what was originally defined as "transport." Under the unifying language in SB 94, the AUMA's language regarding a local jurisdiction's inability to ban "delivery" was retained – meanwhile, statute no longer contained a separate definition for "transport."

The BCC's emergency regulations, promulgated to effectuate MAUCRSA within the AUMA's timelines while interagency rulemaking established permanent regulations, fully recognized the authority of a local jurisdiction "to adopt and enforce local ordinances to regulate businesses" or "to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction." However, there remained a lack of clarity as to whether the AUMA (and subsequently, MAUCRSA) authorized jurisdictions to apply their local control to ban the delivery of cannabis products from a licensee to a consumer resulted in confusion among stakeholders. Many presumed that absent additional guidance from the BCC, delivery may be prohibited within the boundaries of a local jurisdiction.

Subsequently, the BCC's proposed permanent regulations contained numerous revisions to its prior emergency rules. One consequential addition to the regulations was additional language in § 5416 governing delivery to physical addresses. In a newly added subdivision, the regulations stated that "a delivery employee may deliver to any jurisdiction within the State of California provided that such delivery is conducted in compliance with all delivery provisions of this division." These regulations recognized the statutory ban on a jurisdiction preventing "delivery" as an exception to the statute more broadly granting and preserving local control of cannabis activities. The League of California Cities immediately objected to the language, stating in a letter that it "subverts the intent of the voters who approved Proposition 64 by removing local governments' ability to prohibit cannabis deliveries within its jurisdiction."

Unsure of whether the BCC's proposed interpretation of local jurisdictions' authority to ban delivery would be reflected in final regulations, pro-delivery stakeholders supported SB 1302 (Lara) in 2018 to explicitly amend the sections of law recognizing a local jurisdiction's control to regulate or restrict cannabis activity at the local level. SB 1302 would have provided that "a local jurisdiction shall not adopt or enforce any ordinance that would prohibit a licensee from delivering cannabis within or outside of the jurisdictional boundaries of that local jurisdiction."

However, SB 1302 was ultimately pulled from its third reading on the Senate Floor and eventually died on the inactive file.

Later that year, the BCC formally established its permanent regulations. In this final version, the language expressly authorizing cannabis delivery in "any jurisdiction" (through compliance with state law) remained. This effectively confirmed a statewide prohibition on local jurisdictions banning the delivery of cannabis within California. In response, 24 cities sued the BCC on April 5, 2019, arguing that the final regulations contradicted the voter's intent in the AUMA as reflected in ballot materials and public statements by the proponents. The lawsuit sought to clarify that statutory language banning local restrictions on "delivery" were intended to further earlier language banning restrictions on "transport," and that the law's general deference to local control must be preserved through rulemaking.

In November of 2020, a ruling was issued by the Fresno County Superior Court that upheld the regulations. The court essentially ruled that the regulations were not in direct conflict with a local ban on delivery, and therefore did not contradict or preempt local ordinances, which was the plaintiffs' argument. The ruling stated:

> "Here, the issue is not ripe for decision because Regulation 5416(d) does not command local jurisdictions to do anything or preclude them from doing anything. Plaintiffs are not subject to the regulation. Specifically, it does not command local jurisdictions, including plaintiffs, to permit delivery. Nor does it override their local ordinances prohibiting or regulating delivery."

While this ruling was initially heralded as a win for cannabis retailers engaged in delivery, it did not definitively state that local bans on delivery were either authorized or prohibited. Instead, it simply determined that the state's regulations did not expressly override any local control regarding cannabis delivery. Therefore, the question of whether local bans on delivery are lawful under the AUMA and MAUCRSA remains somewhat unresolved, and continues to be a point of both contention and uncertainty. Nevertheless, a number of jurisdictions have interpreted the court decision to sanction local ordinances banning delivery.

Regulations Regarding Cannabis Delivery. Statute contains relatively few provisions governing cannabis delivery. MAUCRSA defines delivery and provides that deliveries "may only be made by a licensed retailer or microbusiness, or a licensed nonprofit." Delivery employees are required to carry their license and identification and present it upon a request from law enforcement. Further, copies of each delivery request must be kept and made available upon request of both a licensing authority and law enforcement by both licensees and customers.

The majority of requirements relating to cannabis delivery are contained in the DCC's regulations. Section 5415 requires that all deliveries of cannabis goods be performed by a delivery employee who is directly employed by a licensed retailer and who is at least 21 years old. All deliveries of cannabis goods must be made in person—drone deliveries are prohibited. Regulations provide that the process of delivery begins when the delivery employee leaves the retailer's licensed premises with the cannabis goods for delivery. Delivery ends when the delivery employee returns to the retailer's premises after delivering the cannabis goods, or attempting to deliver cannabis goods, to the customer. Regulations prohibit delivery employees from engaging in any other activities except for necessary rest, fuel, or vehicle repair stops.

Delivery employees are required to carry a copy of the retailer's current license, the employee's government-issued identification, and an identification badge provided by the employer pursuant to section 5043 of this division. Prior to providing cannabis goods to a delivery customer, a delivery employee is required to confirm the identity and age of the delivery customer and ensure that all cannabis goods sold comply with packaging requirements. Each licensed retailer is required to maintain an accurate list of the retailer's delivery employees and shall provide the list to the DCC upon request.

Regulations expressly allow licensed retailers to contract with a service that provides a technology platform to facilitate the sale and delivery of cannabis goods, such as Eaze. The technology platform cannot deliver cannabis itself, or share in the profits of the sale of cannabis goods. The retailer is prohibited from advertising or marketing cannabis goods in conjunction with the technology platform outside of the platform's site or app.

All deliveries must be made to a physical address. Delivery employees may not leave California during a delivery. Cannabis cannot be delivered to a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center.

In regards to delivery vehicle requirements, deliveries can only take place through an enclosed motor vehicle. The vehicle used in the delivery of cannabis goods must be unmarked and cannot bear any indications on the exterior of the vehicle that the delivery employee is carrying cannabis goods for delivery. Only the licensee or an employee of the retailer licensee for whom delivery is being performed may be in the delivery vehicle.

While carrying cannabis goods for delivery, a licensed retailer's delivery employee must ensure the cannabis goods are not visible to the public. Cannabis goods must be locked in a fully enclosed box, container, or cage that is secured on the inside of the vehicle, which may include the trunk. No portion of the enclosed box, container, or cage shall be comprised of any part of the body of the vehicle or trailer. Motor vehicles must be left locked and equipped with an active vehicle alarm system. Further, a vehicle used for the delivery of cannabis goods shall be outfitted with a dedicated GPS device for identifying the geographic location of the delivery vehicle and recording a history of all locations traveled to by the delivery employee while engaged in delivery.

The maximum value amount of cannabis goods that a delivery employee is allowed to carry at any time is $5,000. Of that, no more than $3,000 can be carried that is not related to a delivery order that was not received and processed by the licensed retailer prior to the delivery employee departing from the licensed premises. The value of cannabis goods is determined using the current retail price of all cannabis goods carried by, or within the delivery vehicle of, the licensed retailer's delivery employee.

A delivery employee may only carry cannabis goods in the delivery vehicle, and may only perform deliveries for one licensed cannabis retailer at a time. A delivery employee must depart and return to the same licensed premises before taking possession of any cannabis goods from another licensee to perform additional deliveries. A licensed retailer's delivery employee may not leave the licensed premises with cannabis goods without at least one delivery order that has already been received and processed by the licensed retailer. Prior to leaving, the delivery driver must have a delivery inventory ledger of all cannabis goods they have been provided, and the driver must maintain a log that includes all stops made during the delivery. This log must be provided to the DCC or law enforcement upon request.

If a licensed retailer's delivery driver does not have any delivery requests to be performed for a 30-minute period, the licensed retailer's delivery driver may not make any additional deliveries and must return to the licensed premises. This doesn't include required meal breaks. Upon returning to the licensed premises, all undelivered cannabis goods must be returned to inventory and all necessary inventory and track-and-trace records shall be updated as appropriate that same day.

The DCC's recently proposed regulations would double the value of cannabis goods that may be carried during delivery from $5,000 to $10,000. Additionally, the proposed regulations would remove the current limit on carrying cannabis goods that have not yet been ordered. Delivery vehicle requirements would also be changed to allow the secure area to be comprised on three sides of any part of the body of the vehicle. The DCC's proposed regulations would also allow for a cannabis retailer to provide curbside delivery, wherein cannabis goods may be delivered to the customer in a vehicle parked immediately outside the licensed retail premises under video surveillance.

Availability of Medicinal Cannabis. As of January 9, 2019, the collective and cooperative model for medical marijuana dispensaries, as authorized under Proposition 215, was formally sunset, and any dispensary that was in place under the Compassionate Use Act was required to obtain a license under MAUCRSA. In the months following that transition date, many expressed concern that the state's new regulatory framework insufficiently accommodated existing patients who use cannabis for medicinal purposes. Because the MAUCRSA allows localities to completely ban cannabis sales within their jurisdictions, many patients arguably have less access to cannabis than they did under the old Proposition 215 system.

According to data recently provided by the DCC, 62 percent of local governments currently ban all forms of cannabis retail. While a handful of jurisdictions have specifically authorized only sales of medicinal cannabis goods, most local governments have taken an "all or nothing" approach to regulation, either allowing both adult use and medicinal cannabis activity or neither. This bill is intended to prevent local governments from making medicinal cannabis impossible to procure within their jurisdictions without in any way impacting their ability to ban adult use.

Further, this bill would only require medicinal cannabis to be made available through delivery. No local government would be required to license or permit storefront retail, allowing cities and counties that have resisted the presence of cannabis businesses as contrary to the character and culture of their communities to continue banning brick and mortar establishments where cannabis may be purchased onsite. Instead, cannabis would be available, at a minimum, through either delivery from a non-storefront retailer located within the jurisdiction, or from a retailer located outside the jurisdiction, depending on how the local government chooses to comply with the law.

While this bill enumerates several general types of regulation that could be restricted, any ordinances would only be disallowed to the extent that they "have the effect of prohibiting the retail sale by delivery of medicinal cannabis." For example, the bill's reference to local regulations of "the operating hours of medicinal cannabis businesses" would not prohibit a local government from placing reasonable restrictions on what hours a business can operate, and the DCC's existing regulations prohibiting retail activity between 10 p.m. and 6 a.m. would still apply. What a local government would not be authorized to do is, as an example, allow medicinal cannabis delivery to only occur for twenty minutes starting at 7 a.m. every fourth Tuesday.

Determination of what local regulations would "have the effect of prohibiting the retail sale by delivery of medicinal cannabis" would ultimately be the responsibility of the courts. Because the bill's primary enforcement mechanism would be actions for writ of mandate by private parties and the Attorney General, the petitioners would have to argue that while a local regulation does not expressly ban medicinal cannabis delivery, it contains restrictions that diminish access to the extent where obtaining medicinal cannabis through delivery is excessively impractical. This language would give local governments flexibility to determine precisely how they desire to meet the bill's requirements while safeguarding against the passage of draconian ordinances intended to circumvent the intent of the bill.

CEQA Exemptions. Signed into law by Governor Ronald Reagan in 1970, CEQA requires public agencies to consider the environmental impact of approving discretionary projects. While the scope of this process can vary based on the nature of the project, CEQA review can frequently be protracted and complex. This bill would allow changes to local ordinances to allow for local delivery of medicinal cannabis in compliance with the bill's requirements to be exempt from the CEQA process, provided that the discretionary review provided for by that local ordinance includes any applicable environmental review required by CEQA.

Current Related Legislation. AB 1014 (McCarty) would requires the DCC to update its regulations governing cannabis delivery to increase the maximum value of cannabis goods from $5,000 to $10,000 and require a licensed retailer to provide their delivery employee certain hardware, tools, and supplies, access to healthcare benefits, and either a vehicle that meets certain requirements or reimbursement for certain costs for the use of the employee's vehicle. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

SB 1148 (Laird) would exempt the issuance of a state license to engage in commercial cannabis activity from CEQA if a local jurisdiction, as the lead agency, has filed a notice of exemption or a notice of determination following the adoption of a negative declaration or certification of an environmental impact report for that specific activity. *This bill is pending in the Assembly Committee on Natural Resources.*

Prior Related Legislation. AB 1356 (Ting) from 2019 would have required a local jurisdiction in which more than 50 percent of the jurisdiction's electorate voted in favor of Proposition 64 to issue a minimum number of local licenses that authorize medicinal cannabis commercial activity equal to one license for every six on-sale general license types for alcoholic beverage sales that are currently active in that jurisdiction. *This bill did not receive a vote on the Assembly Floor.*

AB 1288 (Cooley) from 2019 would have required cannabis delivery to be included in track and trace. *This bill died in the Senate Committee on Appropriations.*

AB 1530 (Cooley) from 2019 would have authorized local governments to ban the delivery of cannabis to addresses within its jurisdiction. *This bill failed passage in the Assembly Business and Professions Committee.*

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.

ARGUMENTS IN SUPPORT:

The **California Cannabis Industry Association** (CCIA) is sponsoring this bill. CCIA writes: "Cancer patients looking for relief from painful symptoms and treatment; veterans looking for a nonpharmaceutical alternative for PTSD-related sleep issues and stress, and chronic pain sufferers looking for a safe, long-term alternative to opioids - these are the people for whom California wrote the Compassionate Care Act of 1996, and the people to whom we owe a duty of loyalty today. SB 1186 seeks to right this wrong and prioritize patient health by prohibiting local jurisdictions from adopting or enforcing any regulation that blocks the legal sale by delivery of legal cannabis products to qualified medicinal cannabis patients. Furthermore, the bill specifies that jurisdictions must allow retail delivery in a manner that ensures that patient demand for medicinal products is sufficiently met within the jurisdiction. SB 1186 does not seek to overturn local control or prevent local jurisdictions from 'just saying no' to adult-use cannabis businesses. It simply prevents jurisdictions from barring patients from accessing the lifesaving medicine they need. In other words, it honors Californian voters' long standing commitment to ensure that patients have access to safe, tested, and effective medicinal cannabis and cannabis products."

ARGUMENTS IN OPPOSITION:

The **Public Health Institute** opposes this bill, writing: "We are particularly concerned by the proposal to restrict the authority of local government to limit sale of certain more harmful products marketed by the cannabis industry, for example ones that imitate candies and food products, use flavors in the same way that Juul sold fruit-flavored vapes to attract youth, or imitate "alcopops" known to be used to initiate youth drinking. The Department of Cannabis Control has consistently failed to address these pressing problems, and Attorney General Bonta has called attention to the problem of cannabis products imitating candies and food brands marketed to children. Sadly, many of these products are sold not only in the illicit market but also by licensed cannabis manufacturers in our state because of the absence of careful product level review. This authority is currently used by numerous cities and counties across the state."

AMENDMENTS:

To clarify the intention of the bill to only restrict local ordinances to the extent that they ban or have the effect of banning the delivery of medicinal cannabis goods, the author may wish to consider taking the following amendments after this bill has passed out of this committee:

1) To ensure that the delivery of manufactured cannabis goods would be included in the bill, update references to "medicinal cannabis" to add "or medicinal cannabis products."

2) To reinforce that a local government is only restricted from limiting the number of medicinal cannabis businesses authorized to operate in the context of sale by delivery, amend paragraph (1) of subdivision (a) in Section 26302 to replace the word "operate" with "deliver cannabis goods."

3) To clarify that the qualified prohibition against local governments restricting the establishment of physical premises for retail sale by delivery would not require storefront retail or any other type of cannabis business beyond what is needed to provide for delivery, amend paragraph (5) of subdivision (a) in Section 26302 to add the final phrase "by a licensed non-storefront retailer."

4) To resolve any potential ambiguity about whether the bill's requirements would preempt state statutes and regulations regarding cannabis businesses, add a new paragraph (5) to subdivision (b) in Section 26302 to provide that nothing in the bill shall be construed to prohibit the adoption or enforcement of the following: "Regulations consistent with requirements or restrictions imposed on cannabis businesses by this division or regulations issued under this division."

REGISTERED SUPPORT:

California Cannabis Industry Association *(Sponsor)*
Americans for Safe Access
California NORML

REGISTERED OPPOSITION:

City of Rocklin
City of San Marcos
County of Butte
Public Health Institute

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

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1194 (Allen) – As Amended April 19, 2022

SENATE VOTE: 37-0

SUBJECT: Public restrooms: building standards

SUMMARY: Authorizes a local government to require, by ordinance or resolution, that multi-stall public restroom facilities within its jurisdiction be designed and constructed, as specified, and identified for use by all genders.

EXISTING LAW:

1) Establishes the Building Standards Commission (BSC) within the Department of General Services and requires the BSC to administer the processes related to the adoption, approval, publication, and implementation of California's building codes, which serve as the basis for the design and construction of buildings in California. (Health and Safety Code (HSC) §§ 18901 *et seq.*)

2) Requires every public agency conducting an establishment serving the public or open to the public, and that maintains restroom facilities for the public, to make every water closet for each sex maintained within the facilities available without cost or charge. Defines public agency for these purposes as any agency of the state, city, county, or city and county. (HSC § 118500)

3) Requires publicly and privately owned facilities, with exception, where the public congregates to be equipped with sufficient temporary or permanent restrooms to meet the needs of the public at peak hours. Defines "facilities where the public congregates" for these purposes to mean sports and entertainment arenas, community and convention halls, specialty event centers, amusement facilities, and ski resorts. (HSC § 118505)

4) Requires all single-user toilet facilities, as defined, in any business establishment, place of public accommodation, or state or local government agency to be identified as all-gender toilet facilities by signage that complies with Title 24 of the California Code of Regulations, and designated for use by no more than one occupant at a time or for family or assisted use. (HSC § 118600(a))

5) Defines "single-user toilet facility" to mean a toilet facility with no more than one water closet and one urinal with a locking mechanism controlled by the user. (HSC § 118600(c))

6) Defines "toilet facility" to mean a room or space containing not less than one lavatory and one water closet. (Title 24 California Code of Regulations 220.0)

7) Defines "toilet room" to mean a room within or on the premises containing water closets, urinals, and other required facilities. (Title 24 California Code of Regulations 220.0)

8) Requires separate toilet facilities to be provided for each sex, except in residential settings and in the following circumstances:

   a) In occupancies with a total occupant load of 10 or less, including customers and employees, one toilet facility, designed for use by no more than one person at a time, must be permitted for use by both sexes.

   b) In business and mercantile occupancies with a total occupant load of 50 or less, including customers and employees, one toilet facility, designed for use by no more than one person at a time, must be permitted for use by both sexes.

   (Title 24 California Code of Regulations 422.2)

9) Requires single use toilet facilities and family or assisted-use toilet facilities to be identified with signage indicating use by either sex. (Title 24 California Code of Regulations 422.2.1)

10) Requires, where a separate toilet facility is required for each sex, and each toilet facility is required to have only one water closet, two family or assisted-use toilet facilities, must be permitted in place of the required separate toilet facilities. (Title 24 California Code of Regulations 422.2.2)

THIS BILL:

1) Authorizes a city, county, or city and county to require, by ordinance or resolution, public restroom facilities within its jurisdiction to be designed and constructed with single-user toilet compartments and identified for use by all genders.

2) Requires public restroom facilities to be designed to serve all genders and to meet all of the following requirements:

   a) The location of the facility shall be along open circulation paths that will maintain privacy and allow for high visibility of common-use areas for security.

   b) Water closets shall be designed as single-user compartments and designated for use by no more than one occupant at a time or for family or assisted use.

   c) Water closets shall be enclosed on all sides by walls or partitions extending from the floor to the ceiling and a door enclosing the fixture for privacy.

   d) Urinals shall be located either in an area visually separated from the remainder of the facility or in individual compartments.

   e) Lavatories shall be located either in the same compartment as a water closet or grouped in an immediately adjacent common-use area accessible to all users.

   f) Adequate light and ventilation shall be provided within each compartment and each area of the facility.

   g) Signage for toilet facilities and compartments shall identify them for use by all genders.

3) Requires single-use toilet facilities to comply with Title 24 of the California Code of Regulations.

4) Specifies that adoption of an ordinance or resolution pursuant to this bill shall not be construed as requiring or authorizing a reduction in either of the following:

    a) The total number of plumbing fixtures that are required pursuant to Title 24 of the California Code of Regulations.

    b) The number of toilet facilities accessible to persons with disabilities that are required pursuant to Title 24 Title 24 of the California Code of Regulations or the federal Americans with Disabilities Act.

5) Authorizes a city, county, or city and county to exclude certain occupancies from the requirements in this bill.

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

COMMENTS:

Purpose. This bill is co-sponsored by the *City of West Hollywood*, the *City of Santa Monica*, the *TransLatin@ Coalition*, and the *Los Angeles LGBT Center*. According to the author, "California has led the nation in ensuring that safe, accessible, gender-neutral restroom facilities are available to visitors of most public places. However, for more proactive cities and counties, existing statutes have limited their authority to explore innovative methods of expanding access and efficiency. Senate Bill 1194 gives local governments the ability to adopt ordinances or resolutions that require the construction of multiple-stall gender-neutral restrooms in places of newly constructed or majorly renovated public accommodation within their jurisdiction. By empowering local governments to set requirements at the local level, SB 1194 will help cities and counties meaningfully build on their commitment to creating safe and accessible environments for transgender and gender non-conforming people as well as people with disabilities and personal caregivers for children and adults."

Background.

Building Standards Commission. As noted on BSC's website, the BSC is charged, in part, with administering California's building code adoption process; reviewing and approving building standards proposed and adopted by state agencies; codifying and publishing approved building standards in the CBC; and resolving conflict, duplication, and overlap in building standards.

California Building Code. To protect the health and safety of people and property, the California Building Code (CBC; Cal. Code Regs., Title 24) regulates the design, construction, quality of materials, use and occupancy, location, and maintenance of all buildings and structures in the state. The CBC is compiled of building standards adopted by state agencies without change from national model codes; building standards adopted and adapted from national model codes; and building standards, authorized by the California Legislature, that address issues and concerns specific to California. The CBC is published every three years, thought intervening code adoption cycles produce supplements 18 months into each triennial period. Amendments to

California's building standards are subject to a lengthy and transparent public participation process throughout each code adoption cycle.

The California Plumbing Code is adopted and amended from the Uniform Plumbing Code, which is developed by the International Association of Plumbing and Mechanical Officials (IAPMO). The California Plumbing Code currently requires that separate toilet facilities be provided for each sex, although IAPMO is in the process of updating the Uniform Plumbing Code, which California traditionally adopts and amends for state use, to include building standards for multi-stall, gender-neutral bathrooms. BSC expects to adopt these standards during the 2024 Triennial Code Adoption Cycle, although the standards would not be effective until 2026. However, the Governor's office has instructed the Division of the State Architect and the BSC to begin developing regulations for multi-stall, gender-neutral bathrooms for the 2022 Intervening Code Adoption Cycle, although these standards would apply only to facilitates within each entity's jurisdiction (e.g. K-12 public schools, California community colleges, and state-owned property, including California State University and University of California campuses).

Local government. Notwithstanding state facilities (e.g. government buildings, public universities, and prisons), local governments are required to enforce the CBC. Most local governments adopt the CBC in local ordinances, and when they do not, the CBC becomes the applicable code by default. Local governments may adopt ordinances that differ from the CBC pursuant to express findings that amendments are reasonably necessary because of local climatic, geological, topographic, or environmental conditions. To be enforceable, an amendment must be filed with the BSC.

Prior Related Legislation.

AB 1732 (Ting), Chapter 818, Statutes of 2016, requires all single-user toilet facilities in any business establishment, place of public accommodation, or government agency to be identified as all-gender toilet facilities, as specified.

ARGUMENTS IN SUPPORT:

The *City of West Hollywood* writes in support as a co-sponsor of this bill:

> SB 1194 promotes safety for transgender and gender non-conforming individuals as it removes the gender differentiation within bathrooms by making private stalls, all gender. This simple action means a world of difference for members of our community who have, and continue to suffer, aggression and acts of violence just because they are transgender or do not conform to traditional heterogender stereotypes.
>
> SB 1194 is also an important measure that provides relief for people with ambulatory restrictions who need assistance from a caretaker when using a bathroom. At times, the caretaker's gender may be the opposite of the client and entering a bathroom can become an issue. Multi-stall gender neutral bathrooms for disabled individuals eliminate this problem, and afford disabled individuals the dignity, privacy and assistance they need and deserve.

> Finally, as Senator Nancy Skinner indicated during the bill's hearing by the Senate Housing Committee on April 27, 2022, multi-stall gender neutral bathrooms are also a good way to address the disparity we are all witness to when attending large events or at movie theaters, and we see long lines in the female bathrooms and no lines in the male bathrooms. Having a multi-stall gender neutral bathroom will equalize the access to bathrooms for all genders, by making these stalls available to anyone.

The *City of Santa Monica* writes in support as a co-sponsor of this bill:

> Clean, accessible, and safe restrooms are a universal need, and the City of Santa Monica has strived to ensure that public restrooms are available to all of our residents and visitors. However, the City recognizes that there is a need for more inclusive gender-neutral restroom facilities that will benefit all including gender diverse and transgender individuals, for those individuals that require the assistance of a caregiver of a different gender, and for parents with children of different genders.
>
> SB 1194 would give cities and counties the flexibility and a clear implementation path to require all restrooms in public to be gender neutral. The state's current building and plumbing codes require that separate toilet facilities be provided for each gender however, the City of Santa Monica believes that requiring gender-neutral public restrooms without reducing the total number of plumbing fixtures provided is a safer and more inclusive alternative.

The *American Civil Liberties Union California Action* writes in support of this bill:

> Trans, gender nonconforming, and intersex (TGI) people, especially trans women of color, suffer rates of violence and discrimination that are much higher than the community at large. Gendered restrooms, which can serve as a location of gender-policing, can be dangerous for TGI people to enter, subjecting them to the risk of violence. They can also force TGI people who do not identify as male or as female to choose between using a restroom that does not match their gender identity or putting themselves at risk of UTIs or other complications from not using the bathroom when needed. TGI people should not have to experience high levels of anxiety when using a public restroom…[this bill] would address this issue by allowing local governments to require newly constructed or majorly renovated public multi-user bathrooms in their jurisdiction be designed and constructed with all-gender single-user toilet compartments.

Disability Rights California writes in support of this bill, "[This bill] removes any awkwardness for a person living with mobility/ambulatory limitations when using a restroom with the assistance of a caregiver, who may happen to be of the opposite gender. Using a restroom should not require much thought from any human being."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUES:

Codifying building standards. The BSC has not developed or approved building standards for multi-stall, gender-neutral bathrooms, and this bill would bypass the BSC's building standards development and approval processes by codifying specific building standards for local jurisdictions to adopt by ordinance or resolution. Notably, the building standards prescribed by this bill may conflict with future building standards adopted by the BSC and the State Architect.

Breadth. This bill authorizes local jurisdictions to require, by ordinance or resolution, public restroom facilities within their jurisdiction to be *designed and constructed* with single-user toilet compartments and identified for use by all genders. Moreover, the bill authorizes local jurisdictions to exclude certain occupancies from this requirement. However, the bill does not explicitly prohibit local jurisdictions from requiring existing public bathrooms to be renovated in order to comply with a local ordinance or resolution requiring public bathrooms to be gender neutral.

IMPLEMENTATION ISSUES:

Bill Terminology. This bill includes a number of terms that are undefined, used inconsistently, or may otherwise cause confusion for local jurisdictions and design professionals.

AMENDMENTS:

1) In anticipation of future statewide building standards pertaining to multi-stall, gender-neutral bathrooms, make the bill's specified building standards optional, thereby allowing local jurisdictions to develop and adopt their own standards if the jurisdiction requires public bathrooms in their jurisdiction to be gender neutral.

2) To prohibit a local jurisdiction from requiring existing bathrooms to be modified, limit a local jurisdictions authority to require multi-stall, gender-neutral bathrooms to new construction and bathrooms undergoing significant renovation.

3) To reduce confusion and ease implementation, clarify the bill's terminology by using existing terms in statute and regulations and making the language consist throughout the bill.

REGISTERED SUPPORT:

City of Santa Monica *(co-sponsor)*
City of West Hollywood *(co-sponsor)*
Translatin@ Coalition *(co-sponsor)*
ACLU California Action
American Institute of Architects California
Disability Rights California
Equality California
Mayor Eric Garcetti, City of Los Angeles

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1247 (Hueso) – As Amended June 8, 2022

NOTE: This bill is double referred and if passed by this Committee will be referred to the Assembly Committee on Judiciary.

SENATE VOTE: 29-0

SUBJECT: Franchises.

SUMMARY: Establishes new disclosure requirements related to franchisor rebates and other benefits and requires a franchisor to disclose the value of all monetary benefits in any agreement that requires a franchisee to assign or waive the franchisee's right to the benefit.

EXISTING FEDERAL LAW:

1) Regulates unfair and deceptive business practices under the Federal Trade Commission Act and establishes the Federal Trade Commission (FTC) to administer and enforce the act. (15 United State Code) (USC) §§ 41-58)

2) Regulates franchise agreements and establishes disclosure requirements under the FTC's Franchise Rule. (Title 16 Code of Federal Regulations (CFR) Parts 436 and 437)

3) Defines "franchise" as any continuing commercial relationship or arrangement in which the terms of the offer or contract specify, or the franchise seller promises or represents, orally or in writing, all of the following:

    a) The franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor's trademark. (16 CFR § 436.1(h)(1))

    b) The franchisor will exert or has authority to exert a significant degree of control over the franchisee's method of operation, or provide significant assistance in the franchisee's method of operation. (16 CFR § 436.1(h)(2))

    c) As a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate. (16 CFR § 436.1(h)(3))

4) Defines "franchisee" as any person who is granted a franchise. (16 CFR § 436.1(i))

5) Defines "franchise seller" as a person that offers for sale, sells, or arranges for the sale of a franchise. It includes the franchisor and the franchisor's employees, representatives, agents, subfranchisors, and third-party brokers who are involved in franchise sales activities. It does

not include existing franchisees who sell only their own outlet and who are otherwise not engaged in franchise sales on behalf of the franchisor. (16 CFR § 436.1(j))

6) Defines "franchisor" as any person who grants a franchise and participates in the franchise relationship. Unless otherwise stated, it includes subfranchisors. For purposes of this definition, a "subfranchisor" means a person who functions as a franchisor by engaging in both pre-sale activities and post-sale performance. (16 CFR § 436.1(k))

7) Makes the offer or sale of a franchise an unfair or deceptive act or practice in violation of the Federal Trade Commission Act unless the franchisor furnishes a prospective franchisee with a copy of the FTC's Franchise Disclosure Document, except as specified. (16 CFR § 436.2)

EXISTING STATE LAW:

1) Regulates franchise agreements under the California Franchise Relations Act and establishes requirements on franchisors related to the termination, renewal, and transfer of a franchise. (Business and Professions Code (BPC) §§ 20000-20043)

2) Regulates the sale of franchises under the Franchise Investment Law and tasks the Department of Financial Protection and Innovation with administering and enforcing the law. (Corporations Code (CORP) §§ 31000-31516)

3) Makes a violation of any provision of the Franchise Investment Law punishable, upon conviction, by a fine of not more than $100,000 or imprisonment under felony sentencing guidelines, or in a county jail for not more than one year, or be punished by both that fine and imprisonment; but provides that no person may be imprisoned for the violation of any rule or order if they prove that they had no knowledge of the rule or order. (CORP § 31410)

THIS BILL:

1) Requires a franchisor and its affiliated companies, within 120 days of the end of the franchisor's fiscal accounting year, to report to its California franchisees, upon a franchisee's request, any money, goods, services, things of value, or entities with whom the franchisee does business on account of the franchise.

2) Requires the reported data to be detailed by each entity that provides the benefit.

3) Makes it a violation of the Franchise Investment Law for a franchisor to execute an agreement that requires the assignment or waiver of a franchisee's right to rebates, promotions, allowances, or other monetary incentives for the sale of a product within the state unless the agreement states the potential or current gross value of that right.

4) Requires the franchisor, if the actual gross value of the assigned or waived right is unknown, to include a reasonable estimate of the value based on the average value for similarly situated franchises.

5) Provides that the violation of the Franchise Investment Law created under this bill does not constitute a crime.

FISCAL EFFECT: Unknown. This bill was rekeyed as fiscal by the Legislative Counsel in the June 8, 2022, amendments.

COMMENTS:

Purpose. This bill is co-sponsored by the *American Association of Franchisees and Dealers* and the *Asian American Hotel Owners Association*. According to the author, "This bill will require a Franchisor to provide how much is generated from rebates, promotions, allowances, or other monetary incentives, services and benefits where the franchise contract includes a clause requiring the waiver or assignment of all rights to the Franchisor for those funds. The disclosure of the amount shall be specific to a location similar to the one the Franchisee is considering. Currently, a potential Franchisee has little conceptual grasp of the true amount of the funds they are signing away at the beginning of their franchise contract nor how much they are continuously giving away to the Franchisor over the course of the contract, largely because the current required disclosure is the sum of everything the Franchise company is receiving from all of their outlets. That number can be so large as to be overwhelming and impossible to figure out how much just one outlet will be giving away. Additionally, this bill has a requirement for ongoing reporting of these funds to the Franchisee, one time per year and upon Franchisee's request, over the life of the contract. These changes will make the contract fairer to the Franchisee and bring about a truer meeting of the minds between Franchisor and Franchisee."

Background. A franchise is a contractual business arrangement where a business (franchisor) authorizes another person or entity (franchisee) to establish their own business using the franchisor's brand and to sell its products or services utilizing a defined marketing or business system established by the franchisor. The franchisor benefits from the expansion of its brand and additional income from fees, royalties, or other payments. The franchisee's business benefits from the name recognition and the convenience of using an established product or service and business model.

However, lack of transparency and deceptive practices in the contract negotiations have led to the regulation of franchises at both the federal and state level. As noted in the Franchise Investment Law findings and declarations:

> The Legislature hereby finds and declares that the widespread sale of franchises is a relatively new form of business which has created numerous problems both from an investment and a business point of view in the State of California. Prior to the enactment of this [law], the sale of franchises was regulated only to the limited extent to which the Corporate Securities Law of 1968 applied to those transactions. California franchisees have suffered substantial losses where the franchisor or his or her representative has not provided full and complete information regarding the franchisor-franchisee relationship, the details of the contract between franchisor and franchisee, and the prior business experience of the franchisor.

> It is the intent of this law to provide each prospective franchisee with the information necessary to make an intelligent decision regarding franchises being offered. Further, it is the intent of this law to prohibit the sale of franchises where the sale would lead to fraud or a likelihood that the franchisor's promises would not be fulfilled, and to protect the franchisor and franchisee by providing a better understanding of the relationship between the franchisor and franchisee with regard to their business relationship.

Federal Franchise Disclosure Document. At the federal level, the FTC has promulgated a package of regulations known as the Federal Franchise Rule. Among other things, the rule requires all franchisors to create a document known as the Franchise Disclosure Document (FDD), and provide that document to franchisees before the completion of a franchise contract. The purpose of the document is to ensure all parties to the agreement are informed of the details of the arrangement.

The Federal Franchise Rule requires the FDD to contain 23 aspects of the business agreement, including franchisee obligations, fees, start-up costs, supplier restrictions and rebates, and territorial rights and restrictions. For supplier restrictions and rebates, the FDD requires franchisors to disclose which goods, services, or other products franchisees must purchase from specific sources and the total revenue or material benefits the franchisor may receive from those purchases.

This bill would establish a similar California-specific requirement, except that a franchisor would be required to report rebates on an ongoing basis, as well as disclose the revenue amounts by each vendor. It would also require the franchisor to appraise and disclose the value of any monetary benefit a franchisor may be required to waive or assign away as part of the franchise agreement, such as discounts or other incentives.

ARGUMENTS IN SUPPORT:

The *American Association of Franchisees and Dealers* and the *Asian American Hotel Owners Association* (co-sponsors) write in support, "[This bill] will specifically require franchise companies to annually report the rebates and other benefits vendors provide to the franchisors based on franchisee purchases. These rebates, or kickbacks, have become greater over the years, and instead of enjoying the promised benefits of group purchasing power, franchisees are often required to purchase goods and services from limited suppliers at higher costs. Having these rebates reported annually will give transparency to what franchisees are really paying for, which squeezes our margins, contributes to lower pay for our employees, and ultimately costs the consumer."

ARGUMENTS IN OPPOSITION:

None on file

IMPLEMENTATION ISSUES:

Clarifying Changes. This bill requires that franchisors report things of value and entities to its franchisees, but is unclear on the relation of the items being reported to the franchise agreement.

If this bill passes this Committee, the author may wish to clarify the bill in the Assembly Committee on Judiciary with the following amendments:

> On page 2 of the bill, lines 7 to 13:
>
> **20033**. Within 120 days of the end of the franchisor's fiscal accounting year, the franchisor and its affiliated companies shall report to its California franchisees, upon ~~their~~ *a franchisee's* request, any moneys, goods, services, anything of value, or any other *benefit received by the franchisor from an* entity with whom the franchisee does business on account of ~~that business.~~ *the franchise.* The reported data shall be detailed by each entity that provides the benefit.

REGISTERED SUPPORT:

American Association of Franchisees and Dealers (co-sponsor)
Asian American Hotel Owners Association (co-sponsor)

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1317 (Bradford) – As Amended April 18, 2022

SENATE VOTE: 22-9

SUBJECT: Secondhand goods: tangible personal property: reporting requirements

SUMMARY: Eliminates the requirement that secondhand dealers and coin dealers report personally identifying information regarding the seller or pledger of secondhand goods to the California Pawn and SecondhandDealer System (CAPSS) database, and instead requires that this information to be kept on file and available upon request by law enforcement.

EXISTING LAW:

1) States that it is the intent of the Legislature to curtail the dissemination of stolen property and to facilitate the recovery of stolen property by means of a uniform, statewide, state-administered program of regulation of persons whose principal business is the buying, selling, trading, auctioning, or taking in pawn of tangible personal property. (Business and Professions Code (BPC) § 21625)

2) Defines "secondhand dealer" to mean any person, copartnership, firm, or corporation whose business includes buying, selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning, or auctioning secondhand tangible personal property, excluding coin dealers or participants at gun shows. (BPC § 21626(a))

3) Defines "coin dealer" as any person, firm, partnership, or corporation whose principal business is the buying, selling, and trading of coins, monetized bullion, or commercial grade ingots of gold, or silver, or other precious metals. (BPC § 21626(b))

4) Excludes from the definition of "secondhand dealer" any persons who perform the services of an auctioneer and any person whose business is limited to the reconditioning and selling of major household appliances, under certain conditions. (BPC § 21626.5)

5) Defines "tangible personal property" as all secondhand tangible personal property that bears or appears to have once had a serial number or personalized initials or inscription and that is purchased by a secondhand dealer or a pawnbroker. Additionally defines "tangible personal property" as property received in pledge as security for a loan by a pawnbroker and property determined by the Attorney General to constitute a significant class of stolen goods according to the most recent property crime data. (BPC § 21627)

6) Establishes CAPSS, which is a single, statewide, uniform electronic reporting system that receives secondhand dealer reports and is operated by the Department of Justice (DOJ). (BPC § 21627.5)

7) Requires secondhand dealers and coin dealers to report all secondhand tangible personal property acquisitions to CAPSS within one business day, which includes information relating to the seller of the property and a description of the property. (BPC § 21628)

8) Provides for the licensure of secondhand dealers by local law enforcement. (BPC § 21641)

THIS BILL:

1) Deletes the requirement that a secondhand dealer or coin dealer report the name and current address of a seller or pledger to CAPSS.

2) Requires instead that each secondhand dealer or coin dealer maintain the identification of the intended seller or pledger for three years from the date the item was reported to CAPSS.

3) Provides that the fields on CAPSS currently used to identify the seller or pledger should instead be populated with the phrase "on file."

4) Requires that a secondhand dealer or coin dealer provide a seller or pledger's information to law enforcement immediately upon request or no later than the next business day.

FISCAL EFFECT: According to the Senate Committee on Appropriations, costs to the DOJ of $151,000 in Fiscal Year 2022-23 and $4,000 ongoing to modify CAPSS, update manuals and training materials, and amend CAPSS regulations.

COMMENTS:

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

> "Over the past several years, there have been many high-profile data breaches in the public and private sector. Accordingly, the potential for the personal information of pawn customers to be leaked creates a heightened risk of identity theft. Because these individuals have limited financial resources, they are often left with little or no recourse in the event their personal or financial information is compromised. Unbanked individuals are already at a higher risk of becoming victims of violent crime because they must often carry large amounts of cash on their person, or hide cash within their homes, making them easy targets for criminals. Reducing the risk of exposure of "personally identifiable information (PII)" during secondhand/pawn transactions is critical for protecting vulnerable communities from theft and predatory schemes."

Background.

California Pawn and SecondhandDealer System (CAPSS). California has long regulated sellers of secondhand goods. In 1937, a law was enacted to require secondhand dealers to report new acquisitions of property to local law enforcement so that these items could potentially be matched with stolen goods. In 1959, this requirement was combined with a requirement that secondhand dealers wait 30 days before selling an item in order to provide law enforcement with time to investigate possible matches. The reporting requirement was also modified that year to consist of a daily paper report to both local law enforcement agencies and the DOJ.

In 2000, legislation was passed establishing a framework for secondhand dealers to make their required reports electronically; however, this system was not funded for over a decade. In the meantime, secondhand dealers submitted paper works on a form referred to as the JUS 123, which would typically be delivered to local law enforcement and was considered an inefficient way of investigating stolen property crimes. Legislation in 2012 ultimately funded a new statewide electronic system known as CAPSS, operated by the DOJ and paid for through increased licensing fees obtained from secondhand dealers who were willing to contribute to the cost of a more streamlined electronic reporting system.

Upon completion of the CAPSS database, a number of secondhand dealers complained that the system was overly prescriptive in terms of how an item must be described. The intent of the DOJ's policy was to more effectively link secondhand dealers' goods to the automated property system containing records of stolen goods; however, a number of stores had difficulty reporting to the database through a batch upload process. As a result, the Attorney General negotiated modifications to statute to allow secondhand dealers more flexibility in the language used to describe an item. Virtually all secondhand dealers falling under the property reporting requirements now do so electronically through CAPSS, making it significantly easier for law enforcement to identify stolen property through an interjurisdictional electronic database.

Information Regarding Sellers and Pledgers. As part of their report to CAPSS, secondhand dealers are required to provide the name and address of the seller or pledger of the property. The identity of the seller or pledger must be have been verified by the dealer. Documents confirming the identity of the seller or pledger may include any of the following documents, provided they are currently valid or have been issued within five years and contains a photograph or description of the person named on it, and, where applicable, is signed by the person, and bears a serial or other identifying number:

1. A passport of the United States.

2. A driver's license issued by any state or Canada.

3. An identification card issued by any state.

4. An identification card issued by the United States.

5. A passport from any other country in addition to another item of identification bearing an address.

6. A Matricula Consular in addition to another item of identification bearing an address.

Because CAPSS is made widely available to law enforcement agencies, concerns were raised during the Trump Administration that sworn officers employed by the federal agency Immigration and Customs Enforcement (ICE) would be authorized to perform queries and obtain reports from the system. Anecdotal evidence suggested that ICE agents may have used CAPSS reports to identify potential subjects of interest in immigration enforcement activities, since many undocumented communities rely on a Matricula Consular to prove their identities. As a result, legislation was enacted in 2020 to exempt the identifying information of sellers or pledgers using a Matricula Consular as identification from the CAPSS reporting requirements.

This bill would expand that exemption to repeal the requirement that the identifying information of any seller or pledger be reported to CAPSS. This information would still be collected, verified, and retained by the secondhand dealer or coin dealer; however, it would not appear in searches of the CAPSS database, which would instead contain only specific information relating to the item being sold or pawned. In the event that law enforcement identifies what they believe may be stolen property in a search of CAPSS, they will be directed to contact the secondhand dealer to obtain further information about the seller or pledger. The author believes that this is change would protect the vulnerable communities who are more likely to sell or pawn items to secondhand dealers from identify theft and predatory schemes.

Prior Related Legislation. AB 1969 (Blanca Rubio, Chapter 185, Statutes of 2020) eliminated the requirement that the name and address of a seller or pledger of secondhand goods be reported to law enforcement when the seller or pledger verifies their identity with a Matricula Consular, and requires the state's database of secondhand property transactions to direct law enforcement to the dealer to obtain the seller or pledger's identity.

AB 1993 (Gipson, Chapter 184, Statutes of 2018) replaced the prior 30 day period of time in which a secondhand dealer and coin dealer may not sell tangible personal property upon reporting the acquisition to a database that identifies possible matches to stolen property with a requirement that secondhand dealers and coin dealers may not sell an item within five days of reporting the acquisition and then must collect and retain buyer information if the property is sold within the following two days.

AB 1751 (Low, Chapter 793, Statutes of 2016) clarified what descriptive categories may be required by the DOJ for secondhand goods reported by dealers through CAPSS.

AB 1182 (Santiago, Chapter 749, Statutes of 2015) narrowed the definition of "tangible personal property" and required the DOJ to annually update the list of items which represent a significant class of stolen goods.

AB 632 (Eggman, Chapter 169, Statutes of 2015) would authorized specified unique identifying numbers to be used as the serial number reported for handheld electronic devices.

SB 782 (Hill, Chapter 318, Statutes of 2013) clarified the interests of licensed pawnbrokers and secondhand dealers relating to the seizure and disposition of property during a criminal investigation or case.

AB 391 (Pan, Chapter 172, Statutes of 2012) required secondhand dealers and coin dealers to report certain information to the DOJ through CAPSS and instituted a new $30 license fee.

AB 704 (Ma) of 2011 would have required that a person conducting business as a secondhand dealer provide specified information to any peace officer upon demand and allow for the storage of the item for up to 90 days, required an impounding agency to satisfy specified requirements regarding impounded property and further would have authorized a nonprofit association composed of 50 or more licensed secondhand dealers to bring an action to enjoin a person from conducting business as a secondhand dealer without being licensed. *This bill was held in the Assembly Judiciary Committee.*

SB 1520 (Schiff, Chapter 994, Statutes of 2000) created a framework for the DOJ to develop a new electronic reporting system that would eventually be CAPSS.

ARGUMENTS IN SUPPORT:

The **California Pawnbrokers Association** (CAPA) is sponsoring this bill. According to CAPA: "Pawnbrokers in California are heavily regulated. The current statutory and regulatory framework protects consumers who avail themselves of pawn loans, and also helps law enforcement identify stolen items. SB 1317 is aimed at protecting pawn customers from identity theft, and also to protect these same customers from potential profiling by third-party vendors that have access to customers' identifying information."

ARGUMENTS IN OPPOSITION:

The **California State Sheriffs' Association** (CSSA) opposes this bill. CSSA argues: "The electronic database CAPSS was created to facilitate the collection and retention of, and access to, information about property being sold or pledged to a secondhand dealer and the person selling or pledging it. CAPSS replaced a system reliant on paper forms that eased not only the collection and entry of these data, but also law enforcement's ability to access them when the property may have been stolen. SB 1317 unwinds that work and would only allow information about the property itself to be entered into CAPSS."

The **California Police Chiefs Association** also opposes this bill, writing: "The purpose of AB 391 was to limit the transaction of stolen merchandise and assist law enforcement in locating stolen property. Since then, numerous bills have been introduced by the California Pawnbrokers Association to water down and weaken this system. SB 1317 would now eliminate that information be reported into the CAPSS system, instead forcing law enforcement agencies to contact each individual pawnbroker and/or secondhand dealer to locate necessary information. This eliminates the utility of the CAPSS system as a statewide tool and deterrent against the sale of stolen goods."

REGISTERED SUPPORT:

California Pawnbrokers Association *(Sponsor)*

REGISTERED OPPOSITION:

California Police Chiefs Association
California State Sheriffs' Association

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