

AGENDA

**ASSEMBLY BUDGET SUBCOMMITTEE NO. 4 ON STATE ADMINISTRATION
AND
ASSEMBLY BUSINESS AND PROFESSIONS COMMITTEE
ASSEMBLYMEMBERS JIM COOPER, EVAN LOW, CHAIRS**

TUESDAY, FEBRUARY 25, 2020

1:30 PM – STATE CAPITOL, ROOM 4202

Informational Hearing

Cannabis: Proposed Consolidation of Regulation and Identifying the Elements of the Illicit Market

I. Introduction from Chair and Members

II. Overview of the Governor’s Proposal Relating to Cannabis Regulation and Analysis of Illicit Market Enforcement Efforts

- Helen Kerstein, Principal Fiscal & Policy Analyst, Legislative Analyst’s Office

III. Governor’s Proposal on Consolidation of Regulation and Perspectives from Current Licensing Agencies

- Clint Kellum, Department of Finance
- Lori Ajax, Chief, Bureau of Cannabis Control
- Miren Klein, Assistant Deputy Director, California Department of Public Health, Center for Environmental Health
- Richard Parrott, Director of CalCannabis, California Department of Food and Agriculture

IV. Local Perspective

- Cara Martinson, Senior Legislative Representative & Federal Affairs, California State Association of Counties
- Charles Harvey, Legislative Representative, League of California Cities

V. Public Comment

INFORMATION ONLY

1115 BUREAU OF CANNABIS CONTROL
4265 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
8570 CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

ISSUE 1: CANNABIS CONSOLIDATION

The Governor's January Budget proposes a plan to consolidate the three licensing entities into a single Department of Cannabis Control by July 2021. The Administration plans to release more details on the proposal in the spring 2020.

BACKGROUND

Early History of Cannabis Regulation in California. Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. 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 MMP'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.

Even after several years of allowable cannabis cultivation and consumption under state law, a lack of a uniform regulatory framework led to persistent problems across the state. Cannabis's continued illegality under the federal Controlled Substances Act, which classifies cannabis as a Schedule I drug ineligible for prescription, generated periodic enforcement activities by the United States Department of Justice. The constant threat of action by the federal government created apprehension among California's cannabis community.

A document issued by the United States Attorney General in 2013 known as the "Cole memorandum" indicated that the existence of a strong and effective state regulatory system, and a cannabis operation's compliance with such a system, could allay the threat of federal enforcement interests. Federal prosecutors were urged under the memo to review cannabis cases on a case-by-case basis and consider whether a cannabis operation was in compliance with a strong and effective state regulatory system prior to prosecution. The memo was followed by Congress's passage of the Rohrabacher-Farr amendment, which prohibits the United States Department of Justice from interceding in state efforts to implement medicinal cannabis.

MCRSA. 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 the newly established BCC within the Department of Consumer Affairs, the CDPH, and the CDFA, with implementation relying on each agency's area of expertise.

MCRSA vested authority for:

- The BCC to license and regulate dispensaries, distributors, transporters, and (subsequently) testing laboratories, and to provide oversight for the state's regulatory framework;
- The CDPH to license and regulate manufacturers; and
- The CDFA to license and regulate cultivators.

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 may also choose to ban cannabis establishments altogether.

AUMA. 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 law retained prohibitions against smoking in or operating a vehicle while under the effects of cannabis, possessing cannabis at a school or other child oriented facility while kids are present, growing in an unlocked or public place, and providing cannabis to minors.

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 addition, the AUMA approved by the voters adopted the January 1, 2018 deadline for state implementation of non-medicinal cannabis in addition to the regulations required in MCRSA that were scheduled to take effect on the same date. The same agencies given authority under MCRSA remained responsible for implementing regulations for adult use.

Under the AUMA, the BCC within the Department of Consumer Affairs continues to serve as the lead regulatory agency for all cannabis, both medicinal and non-medicinal. The AUMA includes 19 different license types compared to the original 17 in MCRSA, and provides the Department of Consumer Affairs (and the BCC) with exclusive authority to license and regulate the transportation of cannabis. The AUMA also authorizes vertical integration models which allows for the holding of multiple license types, as previously prohibited under MCRSA. Additionally, while MCRSA required both a state and local license to operate, the AUMA only stipulated a state license; however, the state is also directed not to issue a license to an applicant if it would "violate the provisions of any local ordinance or regulation."

The language of the AUMA allows for legislative modifications that "implement" or "give practical effect" to the law by a majority vote. However, what constitutes "implementing" has been interpreted to be limited. Consequently, proposed changes to the voters' intent in the AUMA require a two-thirds vote and of those, some may be deemed to require voter approval.

MAUCRSA. In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was introduced 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 and deleted redundant code sections no longer necessary due to the combination of the two systems. MAUCRSA also clarified a number of components, including but not limited to licensing, local control, taxation, testing, and edibles.

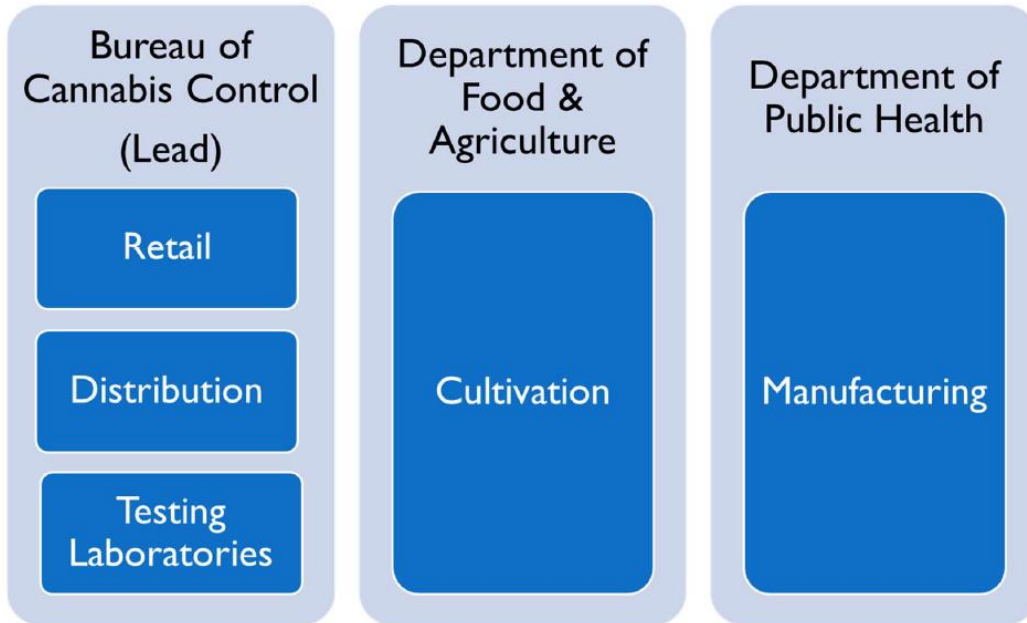
Regulations. On January 16, 2019, the state’s three cannabis licensing authorities—the BCC, the CDPH, and the CDFA—officially announced that the Office of Administrative Law had approved final cannabis regulations promulgated by the three agencies respectively. These final regulations replaced emergency regulations that had previously been in place, and made various changes to earlier requirements following the public rulemaking process. The adoption of final rules provided a sense of finality to the state’s long history in providing for the regulation of lawful cannabis sale and use.

Tax Revenue Allocations. Under MAUCRSA, state excise tax and cultivation tax revenues are deposited into a special fund referred to as the California Cannabis Tax Fund and are then allocated for a variety of purposes in order of priority. After state agency cost reimbursement, Tax Fund revenue is next allocated to fund a series of specific programs designated under Proposition 64. These programs are to be provided with precise amounts of funding totaling \$25 million and are to be appropriated annually until the 2028-29 fiscal year.

Once those allocations have been appropriated, any remaining revenue is divided into sub-trust accounts according to a percentage outlined by Proposition 64. 60% of the remaining revenue is deposited in the Youth Education, Prevention, Early Intervention and Treatment Account, and disbursed by the Controller to the Department of Health Care Services for programs for youth that are designed to educate about and to prevent substance use disorders and to prevent harm from substance use.

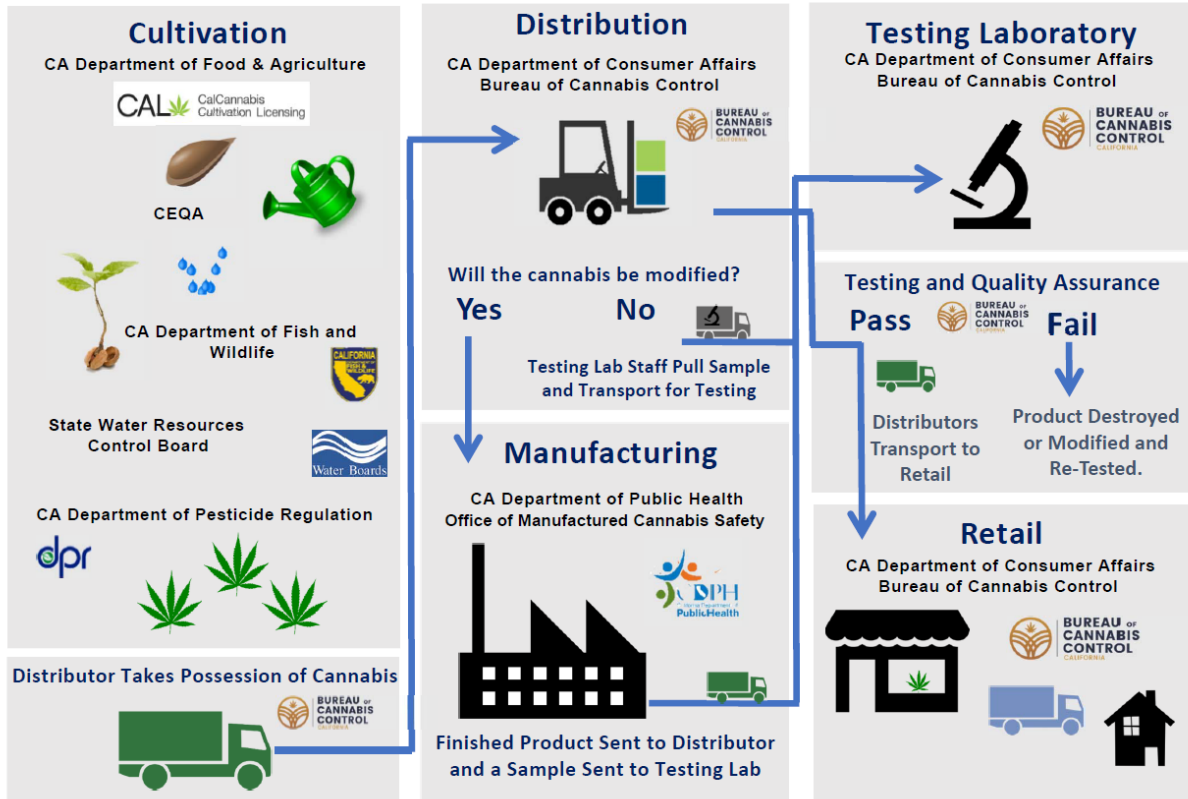
MAUCRSA Licensing Authorities

LICENSING AUTHORITIES

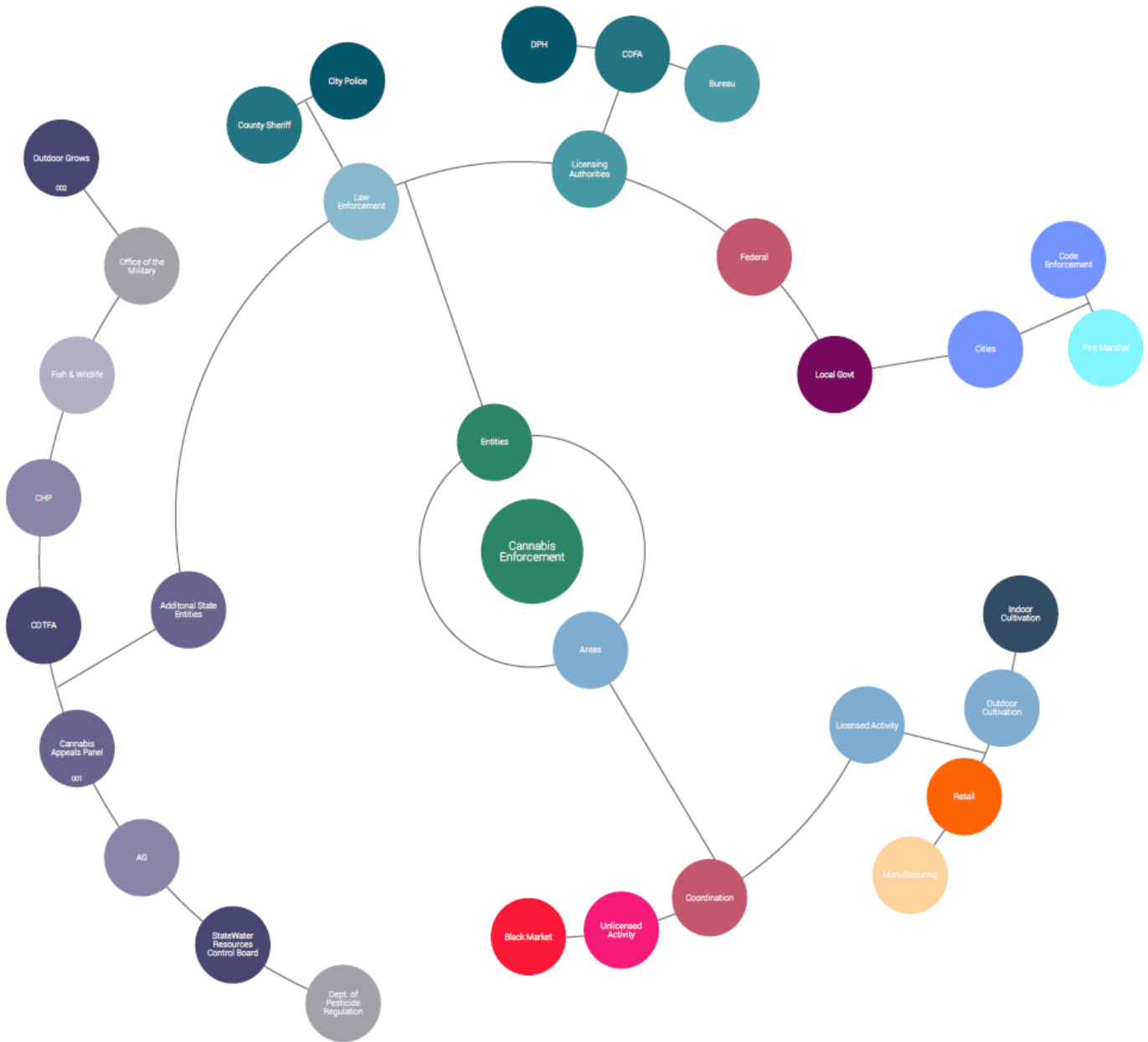


MAUCRSA Cannabis Regulation

CA Cannabis Regulation



MAUCRSA Cannabis Enforcement



STAFF COMMENTS

The Administration has stated that the Consolidation proposal will be released in the spring of 2020. The purpose of this hearing is to raise issues that are relevant to the discussion on cannabis consolidation and to demonstrate the interest the Legislature has in working with the Administration on a comprehensive cannabis consolidation package. The Legislature would like ample time to review and shape the proposal and urges the Administration to release their proposal as soon as possible.

Questions that members may wish to ask the licensing authorities are the following:

- Since the implementation of the cannabis law, what have been some of the best practices in standing up the licensing agencies?
- How do all the licensing agencies currently coordinate with regulations and licensing?
- What is the current budget related to cannabis? How many staff are authorized? How many vacancies do you have?
- How does your licensing agency currently handle enforcement?
- How does your licensing agency deal with issues of equity?
- How does your licensing agency work with locals? How will consolidation change your relationship with locals?
- How will consolidation improve coordination, regulations, enforcement?

Staff Recommendation: This item was presented for information only.
