

Date of Hearing: May 27, 2015

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Jimmy Gomez, Chair

AB 34 (Bonta) – As Amended May 20, 2015

Policy Committee: Business and Professions Vote: 9 - 4

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill, titled the Medical Cannabis Regulation and Control Act, creates a comprehensive state licensing and regulatory framework for the cultivation, processing, distribution, testing, and sale of medical cannabis. The bill includes provisions related to health and safety standards, which include medical cannabis testing and labeling; record-keeping; security; transportation; taxation; and certification of employees. Specifically, this bill:

- 1) Provides that, without limiting the authority of a city or county, the state shall have the exclusive right and power to regulate and license persons for the cultivation, manufacture, transportation, sale, and other related activities regarding medical cannabis in the state. Specifies it does not intend to preempt any local ordinance or prevent local jurisdictions from adopting or enforcing ordinances that ban or regulate cannabis.
- 2) Exempts patients and primary caregivers, as defined, from commercial cannabis activity regulation. States it shall not apply to, and shall have no diminishing effect on, the rights and protections granted to a patient or a primary caregiver pursuant to the Compassionate Use Act of 1996.
- 3) Establishes the Division of Medical Cannabis Regulation and Enforcement, within the Department of Alcoholic Beverage Control (ABC), as the primary regulatory agency as it pertains to the sale, distribution, and transportation of commercial cannabis activity.
- 4) Establishes the Division of Medical Cannabis Manufacturing and Testing, within the State Department of Public Health (CDPH), to administer provisions related to manufacturing, testing, and certification of testing laboratories. Requires CDPH to adopt labeling, packaging, sanitation, and testing standards.
- 5) Establishes the Division of Medical Cannabis Cultivation within the Department of Food and Agriculture (CDFA), to administer provisions related to cultivation of medical cannabis. Requires CDFA to adopt regulations and standards ensuring cultivation is in compliance with specified environmental and agricultural regulations and practices, and to establish weight and measure standards. Prohibits cannabis cultivation on public lands.
- 6) Requires a task force be convened to further specify the appropriate roles of regulatory authorities, and establish communication guidelines. Requires a report to the Legislature by August 1, 2016.

- 7) Requires the three divisions to issue tiered licenses specified in the bill, which depend on the level and type of activity, for commercial cannabis activity within their jurisdictions; establish licensing fees; establish applicant and employee qualifications, and requirements related to security, product disposal, marketing, and labeling; and enforce licensure provisions. Prohibits unlicensed activity.
- 8) Requires regulatory authorities to charge application processing fees to process licenses and license fees that reflect licensure regulatory costs. Requires license fees to be charged upon issuing a license. Requires fees to be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total regulatory costs.
- 9) Establishes the Medical Cannabis Control Fund as a continuously appropriated fund with four specified accounts. Requires fines and penalties to be deposited into an account in the fund, which is available upon appropriation by the Legislature, for the purposes of funding an enforcement grant program.
- 10) Requires specified state departments to enter into an interagency agreement to set forth their respective duties and reimbursement from the fund.
- 11) Requires regulatory authorities to adopt, as soon as practicable, emergency regulations establishing provisional licenses. Requires issuance of provisional licenses to individuals and entities that determined to have been, during the 3 months prior to January 1, 2016, conducting commercial cannabis activity in compliance with local ordinances. Considers entities provided immunity under Los Angeles's Measure D as compliant.
- 12) States it does not prevent local jurisdictions from adopting or enforcing a zoning or other law, ordinance, or regulation that regulates the location, operation, or establishment of commercial cannabis activity. States it does not prevent a city or county from adopting specified local ordinances inconsistent with its provisions.
- 13) Makes licensure for persons who are not local permit holders contingent on proof the applicant has received permission from local authorities for commercial cannabis activities.
- 14) Allows local jurisdictions to impose a temporary local suspension of the license of a commercial licensee for up to 30 days for violations of this chapter or a local ordinance.
- 15) Authorizes boards of supervisors to impose, by ordinance, applicable to voter approval requirements, a tax on cultivation, storing, distributing or selling marijuana by a licensee. Limits total taxation of state and local authorities to 25 percent of retail prices.
- 16) Specifies civil penalties of up to twice the amount of the license fee for each incident of unlicensed activity. Requires penalties collected pursuant to action brought by the Attorney General to be deposited into the General Fund.
- 17) Requires the California Highway Patrol (CHP) to conduct research to determine whether a driver is operating a vehicle under the influence of cannabis, and to assist law enforcement agencies to establish best practices. Funds this activity through the fines and penalties account.

- 18) Requires the Division of Labor Standards Enforcement in the Department of Industrial Relations (DIR) to develop employee competency and training certification standards for cultivation and dispensing. Creates a one-time \$25 registration fee which is deposited in the Fund. Requires employee certification by January 1, 2019.
- 19) Requires the Division of Occupational Safety and Health (in DIR) to convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations. Requires the Division of Apprenticeship Standards (in DIR) to adopt regulations governing apprenticeship programs.

FISCAL EFFECT:

- 1) Significant annual costs, likely in excess of \$15 million (Medical Cannabis Control Fund / GF or special funds), to create the Division of Medical Cannabis Regulation and Enforcement within the ABC to regulate the medical marijuana industry. Significant costs would be incurred before fees are collected, and the bill does not specify a funding source startup costs. Funds would likely come from the GF for at least the first year, until sufficient fee revenue is generated. If authorized, a loan could also be made from the Alcohol Beverages Control Fund for a portion of startup costs, but it appears the fund's projected \$25 million balance will be needed to support an imbalance between expenditures and revenues for ABC's current programs.

The current budget of ABC is approximately \$60 million and 450 positions. The ABC is charged with licensing and regulating persons and businesses engaged in the manufacture, importation and distribution of alcoholic beverages, and administering the provisions of the ABC Act to protect the health, safety, welfare and economic well-being of the state. In addition, the ABC Appeals Board has a \$1 million budget.

Based on funding and staffing levels of the ABC, and considering the complexities of the undertaking and the significant start-up costs of any new entity (adoption of regulations and fee schedules, office equipment and expenses, etc.), it appears reasonable to assume the costs of providing statewide regulation for cultivation, manufacture, testing, transportation, distribution, and sale of medical marijuana, along with associated hearings, appeals, litigation and enforcement, would conservatively be in the range of 25% of the ABC budget.

- 2) Annual costs, likely in the range of several million dollars to CDPH for regulation of manufacturing and testing (Medical Cannabis Control Fund / GF or special funds), as well as CDFA for regulation of cultivation sites ((Medical Cannabis Control Fund / GF or special funds). Funds would likely come from the GF or special funds for at least first year until sufficient fee revenue is generated.
- 3) This bill establishes unspecified fees that must be sufficient to cover regulatory costs. The costs of creating and maintaining the regulatory infrastructure would require significant application fees. For purpose of illustration, the average fee to cover a \$20 million cost, if there were 2,000 annual applications, would be \$10,000 per application.
- 4) This bill creates a continuous appropriation from the Medical Cannabis Control Fund to support specified departments. Continuous appropriations are contrary to the general practice of this committee, which prefers annual budget review of expenditures.

- 5) Minor and absorbable costs to the Medical Board of California associated with provisions defining specified employment and prescribing behavior as unprofessional conduct.
- 6) One-time costs to DIR to certify cultivation and dispensing employees, adopting regulations related to apprenticeship programs, and examining the need for industry-specific regulations, in the range of \$1.3 million (GF or special funds), and \$900,000 annually ongoing (fee-supported Cannabis Certification Fund /GF or special funds).
- 7) Unknown costs, potentially in the range of \$1 million GF to CHP to develop a test determining whether a driver is operating a vehicle under the influence of cannabis, and to develop related protocols.
- 8) Minor ongoing costs to DOJ for background checks, covered by applicant fees.

Tax and penalty revenue:

- 1) Unknown moderate local revenue increase, potentially in the millions of dollars, from a permissive and unspecified local tax.
- 2) Unknown fine and penalty will be deposited in the fines and penalties account in the Fund. Penalties are specified as twice license fees, which are unknown. Additionally, each regulatory authority is authorized to define fines and penalties. Potential GF revenue if actions are brought by the Attorney General.

COMMENTS:

- 1) **Purpose.** According to the author, California has fallen behind the nation and failed to implement a comprehensive licensing and regulatory structure to ensure patient access and protect our environment, public safety, and public health. This bill would create a structure in which patients can safely exercise their right to medical cannabis. It applies existing regulatory frameworks to this new industry, while adapting for the unique and historical circumstances surrounding medical cannabis. To this end, the bill divides the licensing structure among multiple agencies that have expertise in various industries that have similarities to that of medical cannabis, in addition to requiring these agencies to promulgate appropriate regulations for the medical cannabis industry. AB 34 also ensures that all licensees and transactions between them are tracked in order to fight diversion of medical cannabis.
- 2) **Current Medical Marijuana Law.** Possession and sale of marijuana is a crime under federal law, and federal law preempts state law. California patients who obtain a physician's recommendation are protected from prosecution for possessing or cultivating an amount of cannabis reasonably related to their current medical needs, as are patients' caregivers. Patients and caregivers who obtain a state MMP identification card from their county health department are protected from arrest and prosecution for possessing, delivering, or cultivating cannabis. Patients and caregivers who engage in these activities, however, remain liable to federal arrest and prosecution, and those who operate dispensaries face frequent federal enforcement actions. A brief history of relevant law is below:

- a) In 1996, California voters passed Prop 215, the Compassionate Use Act (CUA), which prohibits prosecution for growing or using marijuana if a person has an oral or written recommendation of a physician.
 - b) In 2003, SB 420 (Vasconcellos, Statutes of 2003), the Medical Marijuana Program Act, created a voluntary identification card that patients and caregivers could obtain to protect them from arrest, and limited the amount of marijuana that could be legally grown and possessed.
 - c) In 2005, the U.S. Supreme Court ruled in *Gonzales v. Raich* (2005) that the federal government can enforce marijuana prohibitions despite state medical marijuana law.
 - d) In 2010, the CA Supreme Court ruled in *People v. Kelly* that the MMP section limiting quantities of cannabis is unconstitutional because it amends a voter initiative.
 - e) In 2013, the CA Supreme Court held medical marijuana statutes do not preempt a local ban on facilities that distribute medical marijuana, and that municipalities may prohibit such conduct as a public nuisance (*City of Riverside v. Inland Empire Patient's Health & Wellness Center*).
 - f) Also in 2013, the U.S. Department of Justice (USDOJ) issued guidance that stated, "*In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations*" is less likely to threaten federal priorities which include the most significant public threats, including disrupting gang and cartel activities, preventing revenue diversion, etc. DOJ states where strong state and local regulatory systems exist, "*enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity.*" California is the only state that permits medical marijuana in the absence of a robust statewide regulatory system; half of all states have some such system.
- 3) **Support.** A coalition of marijuana growers, the United Food and Commercial Workers Union, American Nurses Association/California, Peace Officers Research Association of California, the California Statewide Law Enforcement Association, and other organizations support this bill. The Emerald Grower's Association argues the multi-agency approach in this bill ensures that agencies are only responsible for regulating things they are capable of regulating, and also points out the tiered licensing scheme accommodates the different levels and types of activity to be licensed. They note deference to the regulatory process for the many details, given the complexity and multitude of stakeholders.
- 4) **Opposition.** This bill is opposed unless amended the California Police Chiefs Association and League of California Cities. The police chiefs do not believe the ABC is an appropriate administrative department for medical marijuana regulation, and raises concerns regarding the efficacy of state enforcement, instead advocating for an enforcement structure based on local enforcement with state enforcement being secondary. The League of California Cities writes several of this bill's provisions set the stage for future litigation, pitting local governments against the state, and against industry participants who have attempted to set up shop in direct

violation of local ordinances. The Family Winemakers of California oppose placement in ABC and are concerned about the potential redirection of alcohol-related license fee revenue.

5) Related Legislation.

- a) AB 266 (Cooley and Lackey), also on today's calendar, creates a similar statewide regulatory framework, but tasks the Department of Consumer Affairs with licensure duties.
- b) AB 243 (Wood), also on today's calendar, requires medical marijuana cultivation (MMC) to be conducted in accordance with state and local laws and best practices, as specified, and would require state agencies to address environmental impacts of MMC and coordinate with local governments in enforcement efforts, and establishes a MMC permitting system.
- c) SB 643 (McGuire), pending in the Senate Appropriations Committee, establishes within DCA a Bureau of Medical Marijuana Regulation, under the supervision and control of the Chief of the Bureau of Medical Marijuana Regulation, and requires the bureau to license and regulate dispensing facilities, cultivation sites, transporters, and manufacturers of medical marijuana and medical marijuana products, subject to local ordinances, and enforced primarily at the local level.

6) Prior Legislation.

- a) AB 1262 (Correa) of 2014, would have established a licensing and regulatory framework for the cultivation, processing, transportation, testing, recommendation and sale of medical marijuana to be administered by the Department of Consumer Affairs (DCA) and enforced primarily at the local level, was held on the Suspense File of this committee.
- b) AB 1894 (Ammiano), 2014, would have established the Medical Cannabis Regulation and Control Act to regulate the cultivation, testing, transportation, distribution, and sale of medical cannabis, and created the Division of Medical Cannabis Regulation (division) in the ABC, failed passage on the Assembly floor, 26-33.
- c) AB 473 (Ammiano), 2013, would have created the Division of Medical Marijuana Regulation and Enforcement within the ABC to regulate cultivation, testing, transportation, distribution, and sale of medical marijuana failed passage on the Assembly floor (35-37).
- d) AB 2312 (Ammiano), 2012, would have established the Medical Marijuana Regulation and Control Act, authorizing local taxes on medical cannabis and creating a board to regulate the medical cannabis industry, was never heard in the Senate.

- 7) **Staff Comments.** The DIR is tasked with certifying and annually renewing registration for cannabis workers. The bill establishes a fee not to exceed \$25 for initial registration, but it specifies there shall not be a fee for the annual renewal of registration. This puts pressure on the GF or special funds to fund whatever ongoing costs are incurred for registration in absence of fee support. Staff suggests fee authority be provided in a manner sufficient to fund these regulatory activities without GF or other special fund support.

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