

[Assembly Bill 266](#) (Bonta, et al.)

Date: 06/30/15

Program: Medical Cannabis Regulation and Control Act

Sponsor: Author

Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code (BPC)

Effective January 1, 2016

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***This analysis only addresses the provisions that impact the Board of Equalization (BOE).***

**Summary:** Among other things, this bill:

- Enacts Medical Cannabis Regulation and Control Act to be overseen by Office of Medical Cannabis Regulation within the Office of the Governor; and
- Establishes a multi-agency licensing effort that includes the Division of Medical Cannabis Regulation (Office) within the BOE that is directly accountable to the Office.

**Summary of Amendments:** Among other things, the amendments since the previous analysis delete a county's authority to levy a transactions and use tax on marijuana and marijuana products and enact the Medical Cannabis Regulation and Control Act.

**Purpose:** The author states that the purpose of this bill is to establish comprehensive, statewide licensure and regulations for commercial medical cannabis activity that respect local control, protect patients, and promote public safety, and preserve the environment.

**Fiscal Impact Summary:** Unknown increase in sales and use tax.

**Existing Law: Sales and Use Tax Law.** Except where the law specifies an exclusion or exemption, **California's Sales and Use Tax Law**<sup>1</sup> imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state. Therefore, under the law, sales tax applies to retail sales of marijuana, including medical marijuana, to the same extent as any other retail sale of tangible personal property.

For patient treatment, the law<sup>2</sup> exempts from sales and use tax retail sales of medicines, as defined, when the medicines sold or furnished are:

- prescribed by an authorized person and dispensed on a prescription filled by a pharmacist,
- furnished by a licensed physician to his or her own patient,
- furnished by a health facility for treatment pursuant to a licensed physician's order, or sold to a licensed physician.

**Medical Marijuana Program.** Under existing law, the California Uniform Controlled Substances Act<sup>3</sup> prohibits, except as authorized by law, the possession, cultivation, transportation, and sale of marijuana and derivatives of marijuana. Existing law authorizes, under The Compassionate Use Act of 1996 (Proposition 215 of 1996), a patient or the patient's primary caregiver to cultivate or possess marijuana for the patient's medical use when recommended by a physician, as specified.<sup>4</sup>

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<sup>1</sup> Part 1, Division 2 of the Revenue and Taxation Code (RTC) (commencing with Section 6001).

<sup>2</sup> Sales and Use Tax Law Section 6369.

<sup>3</sup> Division 10 (commencing with Section 11000) of the Health and Safety Code (HSC).

<sup>4</sup> HSC Section 11362.5.

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**Proposition D.** Los Angeles city voters passed Proposition D<sup>5</sup> in the May 21, 2013, Municipal Election. Proposition D prohibits the operation or establishment of medical marijuana businesses, as defined. The proposition provides limited immunity from the prohibition for medical marijuana businesses that comply with specified requirements.

**Proposed Law:** Among other things, this bill adds Part 3.5 (commencing with Section 19300) to Division 8 of the Business and Professions Code (BPC) to enact the **Medical Cannabis Regulation and Control Act** (Act).

The Act creates the **Governor's Office of Medical Cannabis Regulation** (Office) within the office of the Governor, under the supervision and control of the Director of the Office, a Governor appointee (subject to Senate confirmation). The Act provides the Office with (1) the overall executive authority and responsibility for all aspects of the Act's cannabis regulation implementation, and (2) Act coordination and oversight responsibility. The following entities, known as the Licensing Authorities, report to and are directly accountable to the Office for their respective designated responsibilities within the regulatory and enforcement framework, each to be administered by a Governor's appointee, subject to Senate confirmation:

- The **Division of Medical Cannabis Regulation**, which the bill establishes within the BOE to administer the Act as it pertains to commercial cannabis activity relating to dispensaries and transporters.
- The **Division of Medical Cannabis Manufacturing and Testing**, which the bill establishes within the State Department of Public Health (CDPH) to administer the Act as it pertains to manufacturing, testing, and certification of testing laboratories for medical cannabis and medical cannabis products.
- The Division of **Medical Cannabis Cultivation**, which the bill establishes within the Department of Food and Agriculture (DFA) to administer the Act as it pertains to cultivation of medical cannabis.

The Act requires the Office to maintain: (1) a permit holder registry and (2) a permit holder's license and commercial cannabis activity records throughout licensure and for a minimum of seven years following the license expiration. The Act requires the Office to make limited licensee information available to a licensee so that it may verify whether it is engaging in commercial cannabis activities with a properly licensed entity.

The Act authorizes the Office to adopt regulations to limit the number of state licenses upon a finding that the otherwise unrestricted issuance of state licenses is dangerous to the public's health and safety.

**Task Force.** The Act requires the Office to convene a task force by April 1, 2016, to advise the Office on standards development pursuant to the Act.

The Act makes the task force responsible for recommending to the Office the appropriate roles of each state entity as it pertains to the Act, as well as the guidelines on communication and information sharing between state entities and with local agencies. The Act requires the task force to submit a report to the Legislature and affected state entities on these standards, determinations, and guidelines by August 1, 2016.

The task force shall be comprised of 15 members, which includes BOE, each of whom shall serve a two-year term. Each member has one vote in task force determinations.

The task force members serve on a voluntary basis and are responsible for costs associated with their participation. The Licensing Authorities are not responsible for travel costs incurred by task force members or otherwise compensating task force members for costs associated with their task force participation.

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<sup>5</sup> [Article 5.1 of Chapter 4, Sections 45.19.6-45.19.6.9 of the Los Angeles Municipal Code.](#)

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**Administrative Authority.** The Act provides the Office and the Licensing Authorities with the authority to:

- Adopt regulations necessary to carry out the purposes and intent of the Act;
- Exercise the powers and perform the duties conferred by the Act;
- Prescribe, adopt, and enforce emergency regulations as necessary to implement the Act.
- Issue state licenses to persons for the cultivation, distribution, manufacture, transportation, and retail sale of medical cannabis within the state;
- Set application, licensing, and renewal fees for state licenses;
- Establish standards for commercial cannabis activity;
- Establish procedures for the issuance, renewal, suspension, denial, and revocation of state licenses;
- Impose a penalty authorized by the Act or any rule or regulation adopted pursuant to the Act;
- Take action with respect to an application for a state license in accordance with procedures established pursuant to the Act;
- Oversee the operation of the Medical Cannabis Regulation Fund, which this bill establishes in the State Treasury; and
- Consult with other state or local agencies, departments, representatives of the medical cannabis community, or public or private entities for purposes of establishing statewide standards and regulations.

The Act requires all standards and regulations promulgated to be the minimum standards and regulations for obtaining and maintaining a state license.

The Act requires the public's health and safety to be the highest priority for the Office and the Licensing Authorities in exercising the licensing, regulatory, and disciplinary functions.

**Enforcement.** The Act authorizes, in part, Licensing Authority directors, persons employed by the licensing authorities for the administration and enforcement of Act, and BOE employees with limited peace officer status, to visit and inspect the licensee premises.

**Proposition D.** The Act states that in no way shall it supersede the provisions of Measure D, approved by the voters of the City of Los Angeles on the May 21, 2013 ballot. Notwithstanding the provisions of this part, cannabis businesses within the City of Los Angeles shall continue to be subject to Measure D and any and all other applicable ordinances and regulations of the City of Los Angeles.

(b) It is the intent of the Legislature to recognize the unique circumstances of the City of Los Angeles with respect to Measure D and associated rules related to commercial cannabis activity. In light of these unique circumstances, the provisions of Sections 19319 and 19338 shall apply in the City of Los Angeles.

The Act requires the BOE to enter into a memorandum of understanding (MOU) with the City of Los Angeles to establish protocols for the following:

- Tracking businesses granted immunity pursuant to Measure D, as approved by the voters of the City of Los Angeles at the May 21, 2013 general election.
- Tracking medical cannabis and medical cannabis products to and from the City of Los Angeles.
- Allowing for the legal transfer of medical cannabis and medical cannabis products from outside the jurisdiction of the City of Los Angeles to within the city by licensees conducting commercial cannabis activities outside of the city.

The Act prohibits a licensing authority from issuing a license to an applicant who proposes to operate within the City of Los Angeles, regardless of the activity for which the license is sought.

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The Act requires a medical cannabis business, as defined by Measure D, within the City of Los Angeles to comply with all standards and regulations applicable to the commercial cannabis activity or activities engaged in by that medical cannabis business with respect to, in part, BOE promulgated regulations for dispensaries and transporters to the extent that those regulations relate to health and safety standards, environmental standards, worker protections, or security requirements.

The Act provides the City of Los Angeles full power, authority, and discretion to enforce all standards and regulations required.

**State Licenses.** The Act requires the BOE's **Division of Medical Cannabis Regulation** to issue the following licenses:

- Type 10, or "dispensary," for the retail of medical cannabis or medical cannabis products. This license allows for delivery upon local approval.
- Type 10A, or "special dispensary status," for dispensers who have no more than three licensed dispensary facilities. This license allows for delivery with local approval.
- Type 11, or "distributor," for the processing and certification of the content of all medical cannabis or medical cannabis products that are transported or delivered by licensees. A Type 11 licensee shall not hold a license in any other license category and shall not own, or have an ownership interest in, a facility licensed pursuant to this chapter other than a security interest, lien, or encumbrance on property that is used by a licensee.
- Type 12, or "transport," for transporters of medical cannabis or medical cannabis products.

State licenses to be issued by the **Division of Medical Cannabis Cultivation** are as follows:

- Type 1, or "specialty outdoor," for outdoor cultivation of less than 5,000 square feet of total canopy size on one premises.
- Type 1A, or "specialty indoor," for indoor cultivation of less than 5,000 square feet of total canopy size on one premises.
- Type 2, or "small outdoor," for outdoor cultivation between 5,001 and 10,000 square feet of total canopy size on one premises.
- Type 2A, or "small indoor," for indoor cultivation between 5,001 and 10,000 square feet of total canopy size on one premises.
- Type 3, or "outdoor," for outdoor cultivation between 10,001 and 44,000 square feet of total canopy size on one premises.
- Type 4, or "nursery," for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

State licenses to be issued by **the Division of Medical Cannabis Manufacturing and Testing** are as follows:

- Type 6, or "manufacturing level 1," for manufacturing sites that produce medical cannabis products using nonvolatile solvents.
- Type 7, or "manufacturing level 2," for manufacturing sites that produce medical cannabis products using volatile solvents.
- Type 8, or "testing," for testing of medical cannabis and medical cannabis products. A Type 8 licensee shall not hold a license in another license category of this chapter and shall not own or have ownership interest in a facility licensed pursuant to this chapter, other than a security interest, lien, or encumbrance on property that will be used by the licensee.

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The Act authorizes a licensee to hold a state license in **up to two separate license categories**, as follows:

- Type 1, 1A, 2, and 2A licensees, or a combination thereof, may apply for a Type 6 or 7 state license or a combination thereof.
- Type 6 and 7 licensees, or a combination thereof, may apply for a Type 1, 1A, 2, 2A state license, or a combination thereof.
- Type 6 and 7 licensees, or a combination thereof, may apply for a Type 10A state license.
- Type 10A licensees may apply for a Type 6 and 7 state license or a combination thereof.
- Type 1, 1A, 2, 2A licensees, or a combination thereof, may apply for a Type 10A state license.
- Type 10A licensees, may apply for Type 1, 1A, 2, 2A state license, or a combination thereof.

Except as provided, the Act prohibits a person or entity that holds a state license from licensure for any other activity authorized under the Act, and from holding an ownership interest in real property, personal property, or other assets associated or used in any other license category.

The Act prohibits a Type 10 or Type 10A licensee from also being licensed as a retailer of alcoholic beverages pursuant to the [Alcoholic Beverage Control Act](#).

The Act allows a licensee conducting commercial cannabis activity in a jurisdiction that, prior to January 1, 2016, imposed a local ordinance requiring a qualified businesses or individuals to cultivate, manufacture, and dispense medical cannabis or medical cannabis products, with all commercial cannabis activity being conducted by a single licensee, to maintain their current categories of licensure.

**Distribution Chain.** The Act requires all cultivator or manufacturer licensees to send all medical cannabis and medical cannabis products cultivated or manufactured to a licensed processor for processing and testing prior to retail or sale of medical cannabis or medical cannabis products to a dispensary, qualified patient, or caregiver, according to the allowances by their license.

Those licensees that hold a Type 10A license (a special dispensary license for dispensaries who have no more than 3 licensed facilities) and a cultivation license must send all medical cannabis to a licensed processor prior to dispensing any product. The Act prohibits medical cannabis and medical cannabis products from being returned to a licensed cultivator or manufacturer unless that licensee is also a licensed dispensary. The Act requires a Licensing Authority to impose a fine upon any licensee who violates these provisions at a reasonable amount, as determined by the Licensing Authority.

Upon receipt of medical cannabis or medical cannabis products by a licensed cultivator or manufacturer, the Act requires a Type 11 licensee (distributor) to first inspect the product to ensure the identity and quantity of the product. The distributor must then send the medical cannabis or medical cannabis product to a Type 8 (Testing) licensee for testing.

Upon certification by the Type 8 (Testing) licensee that the product is fit for manufacturing or retail, all medical cannabis and medical cannabis products must be processed by a certified processor prior to retail or dispensing to ensure the quantity and content of the medical cannabis or medical cannabis product, and for tracking and taxation purposes by the state. The Act requires licensed processors to package or seal all medical cannabis and medical cannabis products in tamper-evident packaging and use a unique identifier, such as a batch and lot number or bar code, to identify and track the medical cannabis or medical cannabis products. The Act mandates that all packaging and sealing be completed prior to any medical cannabis or medical cannabis products being transported or delivered to a licensee, qualified patient, or caregiver.

The distribution chain provisions become operative on July 1, 2017.

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**Provisional Licenses.** The Act requires each Licensing Authority to allow, as soon as practicable following January 1, 2016, a qualified applicant for licensure to apply for, receive, and renew a provisional license to engage in commercial cannabis activity. The provisional licensure intends to ensure an adequate supply of medical cannabis upon full implementation of the Act. The Act requires the provisional license to have a scheduled expiration date, as determined by the Licensing Authority, and that it automatically terminates upon a Licensing Agency's issuance of a regular state license.

The Act requires each Licensing Authority to establish appropriate fees not to exceed the Licensing Authority's reasonable regulatory costs for the issuance and renewal of a provisional license under its jurisdiction.

The Act authorizes the Licensing Authority to consult with relevant local agencies in making a determination on whether a provisional license applicant is in compliance with applicable ordinances. The Act gives priority for provisional licensure to those businesses in compliance with local ordinances prior to September 1, 2015.

To qualify for a provisional license, the Act requires an applicant to disclose to the appropriate Licensing Authority all of the following information in writing:

- The names, addresses, and dates of birth of each principal officer, owner, or board member.
- The common street address and assessor's parcel number of the property at which the licensee conducts activity under the authority of the license.
- The common street address and assessor's parcel number of the property at which cultivation activity was or is to be conducted.
- For the three months prior to March 1, 2016, the quantity of cannabis cultivated, processed, manufactured, tested, transported, or sold at a location, and the quantity expected to be cultivated, processed, manufactured, tested, transported, or sold from March 1, 2016 to September 1, 2016, inclusive. The licensee shall make its records of current activity, and activity for the three months prior to March 1, 2016 available to the Licensing Authority upon request.
- For an applicant seeking a license to cultivate, distribute, or dispense medical cannabis, a notarized statement from the owner or landlord of real property where the licensed activities will occur, as proof to demonstrate the landowner has acknowledged and consented to permit the proposed activities to be conducted on the property by the tenant applicant.

If the applicant meets all the requirements, the Act requires the Licensing Authority to issue a provisional license to individuals and entities that regularly cultivate process, manufacture, transport, or distribute medical cannabis collectively or cooperatively in full compliance with any applicable local ordinance during the three months prior to March 1, 2016.

The Act requires the Licensing Authority to issue or renew a provisional license and send a proof of issuance or renewal to the applicant upon receipt of the application materials and fee to determine whether the applicant meets all the specified requirements and whether the applicant has committed any act or crime constituting grounds for the denial of licensure.

The Act requires the Licensing Authority to continue to issue the provisional license until the licensee's application for a state license has been approved or denied, but no later than 90 days after the Licensing Authority begins accepting applications for regular state licenses.

The Act prohibits a licensing authority from issuing or renewing a provisional license to an individual or entity, or for a premises, if:

- There is pending state or local administrative or judicial proceedings or actions initiated by a city, county, or city and county under an applicable local ordinance, or
- It has been determined through those proceedings to have violated a local ordinance related to cannabis activity, or

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- The person knowingly provides false or fraudulent information on an application for licensure.

The Act requires a provisional licensee to comply with all standards and requirements applicable to a licensee, including, but not limited to, the production, recordkeeping, security, and transportation requirements and standards.

Beginning July 1, 2017, all commercial cannabis activity shall be conducted between licensees of commercial cannabis activity. If the licensing authority has not promulgated its respective regulations by that date, the licensing authority shall provide an extension for all provisional licenses for applicants abiding by the provisions of this chapter.

**Medical Marijuana Program Exemption.** The Act does not apply to, and shall have no diminishing effect on the protections granted to, a patient or a primary caregiver pursuant to the Compassionate Use Act of 1996.

The Act provides that a qualified patient who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person is not engaged in commercial cannabis activity and exempt from the licensure requirements.

The Act also does not consider a primary caregiver engaged in commercial cannabis activity who (1) cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five qualified patients and (2) does not receive remuneration for these activities except for compensation in full compliance with the Medical Marijuana Program. The Act exempts such primary caregivers from the licensure requirements

**Regulations.** The Act requires a Licensing Authority to promulgate regulations for implementation and enforcement of the Act, including, but not limited to, all of the following:

- A description of the various specific forms of commercial cannabis activity to be authorized by the various types of licenses.
- Procedures for the issuance, renewal, suspension, denial, and revocation of a state license.
- Procedures for appeal of fines and the appeal of denial, suspension, or revocation of a state license.
- Application, licensing, and renewal forms and fees (established on a scaled basis, depending on the size or tier of the license).
- Time periods, not to exceed 90 days, by which the Licensing Authority must approve or deny an application for a state license. The failure of the Licensing Authority to act upon an application for licensure within the time prescribed is not deemed approval of the application.
- Qualifications for licensees.
- Security requirements, including, but not limited to, procedures for limiting access to facilities and for the screening of employees. All screening processes shall adhere to guidance and best practices established by the United States Equal Employment Opportunity Commission, including, but not limited to, those on hiring practices relating to the consideration of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964.
- Requirements to ensure that all licensees and certified testing laboratories conform with applicable standards equivalent to state statutory environmental, agricultural, consumer protection, and food and product safety requirements. These standards shall be in addition, and not limited, to any other state and local requirements.
- Develop procedures to ensure each licensee holds and maintains a seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

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The Act also requires the regulations to do all of the following:

- Establish procedures for approval, renewal, or denial of applications for state licensure for each and every aspect of commercial cannabis activity, including, but not limited to, cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, and sale of cannabis.
- Establish applicant qualifications.
- Establish state licensee employee qualifications, including, but not limited to, training and screening requirements. All screening processes shall adhere to guidance and best practices established by the United States Equal Employment Opportunity Commission, including, but not limited to, those relating to hiring practices on the consideration of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964.
- Establish state licensee security requirements, including, but not limited to, procedures to limit access to facilities and to prevent diversion of product to nonmedical use.
- Establish procedures and protocols for identifying, managing, and disposing of contaminated, adulterated, deteriorated, or excess product.
- Establish advertising, marketing, signage, and labeling requirements and restrictions.
- Establish procedures for the suspension, revocation, or surrender of a state license, and establishing related fines and penalties to be assessed against licensees for violations of this chapter.

The Act authorizes each licensing authority to adopt regulations for additional licenses for cannabis activity within its statutory jurisdiction, as deemed necessary.

The Act also requires a Licensing Authority to adopt regulations that prescribe conditions upon which a person whose state license has previously been denied, suspended, or revoked, may be issued a state license.

**Application Procedures.** The Act requires a state license applicant to do all of the following:

- Pay the required fee or fees for each state license for which an application is submitted.
- Register with the Licensing Authority on forms prescribed by the licensing authority. The forms shall contain sufficient information to identify the licensee, including all of the following:
  - Name of the owner or owners of a proposed facility, including all persons or entities having an ownership interest other than a security interest, lien, or encumbrance on property that will be used by the applicant.
  - The name, address, and date of birth of each principal officer and board member.
  - The address and telephone number of the proposed facility.
- Provide a description, in writing, of the scope of business of the proposed facility.
- Provide evidence that the applicant and owner have been legal full-time residents of the state for not less than four years.
- Provide detailed operating procedures, in writing, for the proposed facility, which shall include, but not be limited to, procedures for facility and operational security, prevention of diversion, employee screening, storage of medical cannabis, personnel policies, and recordkeeping procedures.
- Submit the applicant's fingerprint images, as described.
- Provide documentation issued by the local jurisdiction in which the proposed business is operating or will operate certifying that the applicant is or will be in compliance with all local ordinances and regulations.

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- Provide evidence of the legal right to occupy and use an established location.
- If the proposed facility is a cultivator or a dispensary, provide evidence that the proposed facility is located beyond at least a 600 foot radius from a school.
- Provide a statement, signed by the applicant under penalty of perjury, that the information provided is true.
- For an applicant with 20 or more employees, provide: (1) a statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement, and (2) the applicant's seller's permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, or indicate that the applicant is currently applying for a seller's permit.
- Provide any other information required by the Licensing Authority.
- For an applicant seeking a cultivator, distributor, or dispensary license, provide a notarized statement from the owner of real property or their agent where the cultivation, distribution, manufacturing, or dispensing commercial medical cannabis activities will occur, as proof to demonstrate the landowner has acknowledged and consented to permit cultivation, distribution, or dispensary activities to be conducted on the property by the tenant applicant.

For applicants seeking a state license to cultivate, distribute, or manufacture, the application shall also include a detailed description of the operating procedures for, as applicable, cultivation, extraction and infusion methods, the transportation process, inventory procedures, and quality control procedures.

Upon receipt of an application for licensure and the applicable fee, the Act requires each Licensing Authority to make a thorough investigation to:

- Determine whether the applicant and the premises for which a state license is applied qualify for the state license, and
- Determine whether the applicant complies with the Act, and
- Investigate all matters connected therewith that may affect the public welfare and morals.

The Act requires a Licensing Authority to deny an application if either the applicant or the premises for which a state license is applied do not qualify for licensure. However, a Licensing Authority may place reasonable conditions upon licensure if grounds exist for denial and the licensing authority finds those grounds may be removed by the imposition of those conditions, unless otherwise provided.

Each Licensing Authority may deny the application for licensure or renewal, or suspend or revoke a state license, if any of the following conditions apply:

- An entity making or authorizing in any manner or by any means a written or oral statement that is untrue or misleading and that is known, or that by exercise of reasonable care should be known, to be untrue or misleading.
- Conduct that constitutes fraud.
- Conduct constituting gross negligence.
- Failure to comply with the Act or any rule or regulation adopted.
- Conduct that constitutes grounds for denial of licensure pursuant to [Chapter 2 \(commencing with Section 480\) of Division 1.5](#).
- Local agencies have notified the Licensing Authority or the Office and provided evidence that a licensee or applicant within its jurisdiction is in violation of local ordinances relating to medical cannabis activities.

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- The applicant fails to meet the requirements of the Act or any regulation adopted or any applicable city, county, or city and county ordinance or regulation. If a local government adopts an ordinance or resolution authorizing medical cannabis to be cultivated, manufactured, stored, distributed, or sold within its jurisdiction, it may submit to the office documentation detailing their renewal requirements. Failure to submit an ordinance or resolution to the office shall not impair the enforceability of the ordinance or resolution. Ordinances or resolutions that are not submitted pursuant to this subdivision shall not be considered in denial of licensure pursuant to this chapter.
- Granting or continuation of a state license would be contrary to the public's safety.
- The applicant holding or seeking a state license has been convicted of a misdemeanor involving moral turpitude, excluding misdemeanors involving marijuana.
- The application has failed to state with sufficient specificity the jurisdiction and location at which the applicant proposes to establish operations.
- The applicant, or any of its officers, directors, or owners, is under 21 years of age.
- The applicant fails to provide notarized written proof that the owner of real property or landlord has acknowledged and consented to its tenant's proposed cultivation or dispensing of medical cannabis or medical cannabis products.
- The applicant has failed to provide information requested.
- The applicant, or any of its officers, directors, or owners, has been convicted of a felony criminal conviction for the possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance (excluding marijuana) for drug trafficking involving specified felonies. The Licensing Authority may, at its discretion, issue a state license to an applicant that has obtained a [certificate of rehabilitation](#).
- The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis.
- The applicant, or any of its officers, directors, or owners, has been sanctioned by a Licensing Authority, the Office, or a city, county, or a city and county for unlicensed commercial medical cannabis activities or has had a license revoked under the Act in the previous three years.
- The applicant, or any of its officers, directors, or owners, has been subject to fines or penalty for cultivation or production of a controlled substance on public or private lands, as provided.
- The proposed commercial medical cannabis activity will violate any applicable local law or ordinance.
- The applicant has had 20 employees or more in the past year and failed to enter into a labor peace agreement.
- The applicant or the owner is unable to establish that he or she has been a resident of the state for not less than four years.
- Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of the Revenue and Taxation Code.

The Act requires that applicants to be notified of a denied application in writing via personal service or mail addressed to the address of the applicant or licensee set forth in the application. The denial letter shall contain the detailed reasons for which the application was denied. The Act provides the applicant the right to appeal the denial and be given a hearing within 30 days of the appeal. On appeal, the decision shall be upheld unless the applicant demonstrates that the applicant is in fact eligible for licensure and the application is in compliance with this chapter.

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**License Application Approval.** The Act authorizes a Licensing Authority to issue a state license and send proof of issuance to the applicant provided the applicant has not committed an act or crime constituting grounds for the denial of licensure. The Act provides that each state license application approved by the respective Licensing Authority pursuant to this chapter is separate and distinct and the licensing authority may charge a separate fee for each.

The Act also prohibits a Licensing Authority from issuing a state license unless the applicant has met all of the requirements and requires a Licensing Authority to report to the office each approved state license application within 24 hours of its approval.

The Act makes valid an approved state license application for a period not to exceed one year from the date of approval unless revoked or suspended earlier than that date.

**Licensee Prohibitions and Requirements.** Unless otherwise provided, the Act prohibits a person from:

- Selling, distributing, providing, or donating medical cannabis or medical cannabis products to a patient or caregiver other than at a licensed dispensing facility or their delivery service, and
- Cultivating medical cannabis other than at a licensed cultivation site; and
- Manufacturing or processing medical cannabis or medical cannabis products other than by a licensed manufacturer.
- Transporting medical cannabis from one facility issued a state license to another other than by a licensed transporter.

The Act prohibits a licensee from cultivating, processing, storing, manufacturing, transporting, or selling medical cannabis in the state unless accurate records are kept at the licensed premises. A licensee must keep, at the licensed premises, accurate records of the specific commercial cannabis activity conducted by the licensee that include, at a minimum, all of the following for each batch of product:

- The name and address of the supplier.
- The dates on which the product was received.
- The amounts, form, and batch and lot number.
- The location of the cultivation site.
- The name of the employee who received the product.
- Records demonstrating compliance by the licensee with state and federal rules and regulations regarding reporting and taxation of income received.
- Receipts for all expenditures incurred by the licensee and banking records, if any, for all funds obtained or expended in the performance of any activity under the authority of the state license.

The Act requires records to be kept for a minimum of seven years following approval of a state license.

The Act authorizes the office, specified local enforcement agencies, and any other appropriate state or local agency to:

- Examine the books and records of a state licensee and to visit and inspect the premises, as necessary. All inspections must be conducted during standard business hours of the licensed facility.
- Enter and inspect the premises of a state licensed facility between the hours of 8 a.m. and 8 p.m. on any day that the facility is open, or at any reasonable time, to ensure compliance and enforcement of the Act or a local ordinance.

The Act requires the licensee to provide requested books or records no later than five business days after the request is made.

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If a licensee or an employee of a licensee refuses, impedes, obstructs, or interferes with an inspection, the Act authorizes the state license summarily suspended and requires the Licensing Authority to directly commence proceedings for the revocation of the state license.

If a licensee or an employee of a licensee fails to maintain or provide the required books and records, the Act subjects the licensee to a civil fine of fifteen thousand dollars (\$15,000) per individual violation.

The Act subjects all cultivator, distributor, and dispensing licensees to inspection, as specified by the licensing authority, in order to ensure compliance, including, but not limited to, maintaining proper documentation at each site or facility.

**Penalties.** The Act subjects a person that engages in commercial cannabis activity without a license to civil penalties of up to twice the amount of the license fee for each violation, and the Office, Licensing Authority, or court may order the destruction of medical cannabis associated with that violation. Each day of operation constitutes a separate violation. The Act requires all civil penalties imposed and collected to be deposited into the Medical Cannabis Fines and Penalties Account, which this bill creates in the State Treasury. A day of operation is defined to mean any period of time within a 24-hour period. These penalties do not apply to unlicensed facilities in the City of Los Angeles.

The Act states that criminal penalties continue to apply to an unlicensed person or entity engaging in commercial cannabis activity in violation of the Act, including, but not limited to, those individuals covered under [HSC Section 11362.7](#).<sup>6</sup>

**Licensed Transporters.** A licensee authorized to transport, or transport and deliver, medical cannabis and medical cannabis products may do so only as set forth in the Act. Prior to transporting or delivering medical cannabis or medical cannabis products, the Act requires a licensee authorized to transport or deliver medical cannabis or medical cannabis products to do both of the following:

- Complete an electronic shipping manifest as prescribed by the licensing authority. No delivery shipping manifests shall identify the qualified patient or primary caregiver by name or address.
- Securely transmit the manifest to the licensing authority and the licensee that will receive the medical cannabis product, as applicable.

During transportation or delivery, the Act requires the licensed transporter to maintain a physical copy of the shipping manifest and make it available upon request by a Licensing Authority, local law enforcement officers, or any other designated enforcement agency.

The Act requires the licensee receiving the shipment to maintain each electronic shipping manifest and make it available upon request by a Licensing Authority, local law enforcement officers, or any other designated enforcement agency. The receiving licensee must also submit to the Licensing Agency a record verifying receipt of the shipment and the details of the shipment.

The bill authorizes any licensee to transport between medical cannabis and medical cannabis products licensees with a total retail value less than the statewide monetary threshold, which the Act requires the Licensing Authority to adopt by regulation after review by the task force and the Office.

The Act requires the Licensing Authority (BOE) to develop a database containing the electronic shipping manifests, which shall include, but not be limited to, the quantity, or weight, and variety of products shipped; estimated times of departure and arrival; quantity, or weight, and variety of products received; actual time of arrival; and a categorization of the product.

The Act also requires the database designed to flag irregularities for a Licensing Authority to investigate. An authorized enforcement authority may, at any time, inspect shipments and request documentation for current inventory.

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<sup>6</sup> Medical Marijuana Program.

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The Act shall not be construed to authorize or permit a licensee to transport or deliver, or cause to be transported or delivered, cannabis or cannabis products outside the state, unless authorized by federal law.

The Act prohibits a local jurisdiction from preventing:

- The transportation of medical cannabis or medical cannabis products on public roads by a licensee that complies with the Act, and
- The delivery of medical cannabis or medical cannabis products on public roads by a licensee that with the Act and applicable local ordinances.

The Act specifically prohibits all mobile, vehicular, and technology platforms that enable qualified patients or primary caregivers to arrange for any transportation with a third party, except as otherwise provided.

Upon approval of the Licensing Authority (BOE), the Act requires a licensee authorized to provide delivery services to abide by the following:

- The city, county, or city and county in which the premises of the licensee is located, and in which each delivery is made, must specifically permit delivery service by ordinance referring to this section.
- All employees delivering medical cannabis or medical cannabis products must carry a current license authorizing those services during deliveries, and must present that license upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this chapter.
- During transportation or delivery, the licensed transporter shall maintain a physical copy of the shipping manifest and make it available upon request to agents of the licensing authority, local law enforcement officers, or any other designated enforcement agency specified security requirements.

The Act requires the Licensing Authority (BOE) to summarily suspend that facility's license and commence without delay proceedings for the revocation of the license if the Licensing Authority shall summarily suspend that facility's license whenever a Licensing Authority has knowledge that a licensee has transported or delivered, or arranged or facilitated the transport or delivery of, medical cannabis or medical cannabis products in violation of the Act.

Notwithstanding any other law or the wage orders of the Industrial Welfare Commission, the Act entitles a driver employed to transport medical cannabis or medical cannabis products to overtime pay pursuant to Labor Code Section 510.

The Act also authorizes a county to impose a tax on each delivery transaction completed by a licensee.

**Miscellaneous.** The Act requires each Licensing Authority to make recommendations to the Legislature pertaining to the establishment of an appeals and judicial review process for persons aggrieved by a Licensing Authority's final decision.

The Act authorizes a Licensing Authority to refuse to issue, reinstate, or renew a state license, or to suspend a state license for failure of a licensee to resolve all outstanding final liabilities, including, but not limited to, BOE-assessed taxes, additions to tax, penalties, interest, and fees, provided the Licensing Authority mails a preliminary notice to the licensee at least 60 days prior to the refusal or suspension that indicates the license will be refused or suspended by a date certain.

As it relates to the BOE, the Act applies the provisions of:

- Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the BOE's collection of the fees, civil fines, and penalties imposed pursuant the Act.

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- Chapter 8 (commencing with Section 55381) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the BOE's disclosure of information under the Act.

All license fees collected by the licensing authority pursuant to this chapter shall be deposited into the Medical Cannabis Retail Fees Account, which is hereby established within the fund. All moneys within the Medical Cannabis Retail Fees Account are available upon appropriation to the State Board of Equalization, solely for the purposes of fully funding and administering this chapter, including, but not limited to, the costs incurred by the board for its administrative expenses and costs and the costs of regulation.

**Track and Trace.** The Act requires the BOE to submit, by March 1, 2016, a request for proposal to the public regarding a tracking program for medical cannabis and medical cannabis products as part of the anti-diversion effort. The Act requires the BOE to choose a supplier and begin full implementation of the program prior to the issuance of state licenses.

The Act requires the BOE to adopt a medical cannabis and medical cannabis products track and trace process for reporting the movement of cannabis items throughout the distribution chain that also employs secure packaging and that is capable of providing information that captures, at a minimum, all of the following:

- The licensee receiving the product.
- The transaction date.
- Any other information deemed necessary by the BOE for the taxation and regulation of medical cannabis and medical cannabis products.

The Legislature intends, in subsequent legislation, to adequately fund the medical cannabis and medical cannabis products track and trace process.

**Local Provisions.** The Act requires each Licensing Authority to work in conjunction with local agencies to implement, administer, and enforce the Act, adopt regulations, and take appropriate action against persons who fail to comply with the Act or adopted regulations.

The Act does not mandate a state agency to enforce a local law, ordinance, rule or regulation with respect to a facility site or operation or a transporter issued a state license.

The Act provides a city and county full power and authority to enforce the Act and Office-promulgated rules, regulations, and standards for facilities issued a state license and located within an incorporated area of a city or unincorporated area of a county, respectively.

State agencies must collaborate with local agencies to enforce state standards and regulations to the extent that it is within the scope of other statutory responsibilities of local agencies and to the extent that resources for this enforcement are available to the local agencies.

Section 7 of Article XI of the California Constitution authorizes a city, county, or city and county to adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. The state preempts local ordinances for all conflicts between the state and local standards, requirements, and regulations regarding health and safety, testing, security, and worker protections.

The Act authorizes a Licensing Authority director, or a district attorney, county counsel, city attorney, or city prosecutor to bring an action in the name of the people of the State of California to enjoin a violation or the threatened violation of any provision of the Act. This includes a licensee's failure to correct objectionable conditions following notice or as a result of a rule promulgated pursuant to the Act, and to assess and recover the Act's civil penalties. The action must be brought in the county in which the violation occurred or is threatened to occur.

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The Act requires a state or local agency to immediately notify the Office and the appropriate Licensing Authority of violations or arrests made for violations over which the licensing authority has jurisdiction that involve a licensee or licensed premises. Notice shall be given within 10 days of the violation or arrest. The Act requires the Office or Licensing Authority to promptly investigate as to whether grounds exist for suspension or revocation of the state license.

The Act requires the Office to establish procedures to provide any relevant state and, local agencies, including all Licensing Authorities, upon their request, with 24-hour access to information to:

- Verify a state license;
- Track transportation manifests; and
- Track the inventories of facilities issued a state license.

These records must allow agencies to verify a state license and provide summary information on licensees consisting of the name of the licensee, the date the license was issued, the status of the license, and the licensee's mailing address.

The Act grants the state the right and authority to conduct state licensure activities and to regulate commercial cannabis activity pursuant to the Act. Local governments have the right and authority to regulate cannabis activity within their jurisdiction, including granting or refusing to grant permits pursuant to local ordinances.

The Act authorizes Licensing Authorities to issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Beginning January 1, 2018, the Act prohibits any person from engaging in commercial cannabis activity without possessing a state license and a local permit. A "state license" includes a provisional license.

The Act also states that Licensing Authorities have sole authority to revoke a state license and that local agencies have sole authority to revoke a local permit.

The issuance of a state license does not, in and of itself, authorize the recipient to begin business operations. The state license certifies, at a minimum, that the applicant has paid the state licensing fee, successfully passed a criminal background check, and met state residency requirements.

The Act prohibits a facility from operating in a local jurisdiction that prohibits the establishment of that type of business, even if a state license has been granted. A facility shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinances.

The Act requires a Licensing Authority to schedule a hearing to determine whether the evidence is sufficient to constitute grounds for the revocation of the license within 20 working days if a local government agency:

- Notifies the Office or a Licensing Authority; and
- Provides evidence that a licensee or applicant within its jurisdiction is in violation of local ordinances relating to cannabis activities.

Revocation of a state license or local license or permit terminates the ability of a medical cannabis business to operate within California.

**Background: Medical Marijuana Sellers – Sales Tax.** In 1996, California voters passed Proposition 215, also known as the Compassionate Use Act of 1996, which allows patients and their primary caregivers to cultivate or possess marijuana for personal medical treatment with the recommendation of a physician, as specified.

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In 2003, Senate Bill 420 (Ch. 875, Stats. 2003, Vasconcellos) was enacted to establish statewide guidelines for Proposition 215 enforcement. In particular, SB 420 clarified that nonprofit distribution is allowed in certain cases for patient cultivation cooperatives, small-scale caregiver gardeners, and dispensing collectives. However, despite the fact that numerous medical marijuana dispensaries currently do business in California, the sale of medical cannabis is illegal under federal law.

The sale of medical marijuana<sup>7</sup> is taxable. The BOE issues seller's permits to those medical marijuana sellers that apply and will issue seller's permits to any other sellers making unlawful sales.

In 2007, the BOE mailed a special notice to California sellers of medical marijuana to clarify the application of tax to medical marijuana sales and the requirement that they must hold a seller's permit.

### Commentary:

1. The **June 30, 2015 amendments** make non-substantive reference changes, require the BOE to enter into an MOU with the City of Los Angeles to establish specified protocols, and delete the provisions that specifically authorize a marijuana and marijuana products transactions and use tax. The **June 2, 2015 amendments**, in part, enacted the Medical Cannabis Regulation and Control Act to be overseen by the Office and created a multi-agency licensing framework that includes the BOE.
2. **Distribution chain confusing.** This bill outlines a distribution chain that requires a cultivator and manufacturer to send all medical marijuana to a processor for processing and testing prior to retail sale. The medical marijuana cannot be returned unless the cultivator or manufacturer also holds a dispensary license.

The bill further requires an unclear process for cultivation and manufacturing licensees, upon receipt of medical cannabis, to have a distributor inspect and ensure the medical cannabis identity and quantity. The distributor must then send the medical cannabis to a laboratory for testing. Once the medical cannabis is certified by a laboratory, it is returned to a processor who is required to package and seal the product prior to delivery to a licensee, qualified patient, or caregiver.

In addition, the bill refers to a "processor," an undefined term, to the distribution chain and creates a "nursery" license that the Act does not mention beyond establishing that license.

The BOE staff suggests a distribution chain that begins with a nursery to a cultivator, qualified patient or caregiver. The cultivator should sell only to a distributor who could be responsible for testing and packaging the medical cannabis for sale to a wholesaler, manufacturer, or dispensary. The proposed distribution chain conforms to the proposed track and trace system, which also allows for tracing back to a nursery in the case of a recall.

3. **Looking to the future.** BOE staff anticipates future recreational cannabis legalization along with a cannabis excise tax. The distribution chain outlined above (Comment 2) requires all cannabis sales to go through a distributor before sale to a manufacturer or dispensary. The distributor level would be the point in the chain where a future excise tax could be imposed and collected. Testing, packaging, and labeling could also take place at the distributor level.
4. **Administrative concerns.** The BOE staff has administrative concerns, including, but not limited to, the distribution chain, required regulations, implementation time, and funding. The BOE staff is currently working with the author to draft language to address these concerns.
5. **Administrative program start-up cost funding essential.** This bill enacts a BOE-regulatory framework with respect to distributors, dispensaries, and transporters to begin with provisional licensing as soon as practicable following January 1, 2016. As a result, the BOE must begin to implement the bill upon enactment, which requires current year funding. Without Fiscal Year 2015-16 funding, the BOE cannot begin implementation.

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<sup>7</sup> All retail sales, including illegal sales, are subject to tax.

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Typically, the BOE seeks administrative cost reimbursement from the account or fund into which revenues are deposited. However, this bill creates the Medical Cannabis Retail Fees Account within the Medical Cannabis Regulation Fund (Fund), which lacks funding to reimburse the BOE prior to collection of the license fees. Upfront BOE implementation cost reimbursement is essential.

To address implementation costs, the bill provides funds to be advanced as a General Fund (GF) or special fund loan for regulatory activity establishment and support. The loan would be repaid by the initial proceeds from fees collected pursuant to the Act or any rule or regulation adopted, by January 1, 2022. *However, the BOE staff suggests a specific appropriation in the bill for implementation costs to allow the BOE and the other state agencies to begin implementation upon enactment of the bill.*

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the proposed tax program. **Without an appropriation, it may be necessary for the BOE to divert GF dollars to implement the proposed tax program. A GF diversion typically results in a negative impact on GF-supported programs and related State and local government revenues.**

- 6. Track and trace and transportation database.** The bill requires the BOE to submit a request for proposal regarding a medical cannabis and medical cannabis product tracking system. The BOE must implement the tracking system *before issuance of state licenses pursuant to the Act*. BOE staff assumes that the BOE may continue to issue and renew provisional licenses until the tracking system's implementation.

In addition, the bill requires the BOE to develop a database that contains electronic shipping manifests, which includes specified information. In addition, the database shall be designed to flag irregularities and to alert the BOE for investigation.

BOE staff agrees that both the track and trace system and the transportation database will be useful to identify product diversion, for product recalls, and sales tax enforcement.

As a point of reference, [SB 1701](#) (Ch. 881, Peace) required the BOE to implement a cigarette tax stamp or meter impression capable of being read by scanning or similar device, and, at a minimum, include specific data encrypted within the new stamp. The contract process, including equipment delivery to distributors, took approximately three years to complete.

**Administrative Costs:** BOE administrative costs related to this bill are substantial. These costs include: distributor, dispensary, and transporter licensee identification, notification, and registration; regulation development; manual and publication revisions; track and trace system contract; transportation database contract; computer programming; report processing; Los Angeles protocol establishment; staff training; and public inquiry responses. A detailed cost estimate is pending.

**Revenue Impact:** This bill would likely increase sales and use tax revenue to the state by an unknown amount.