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Assembly Bill 1609 (Budget Committee)
Date: 06/13/16
Program: Medical Marijuana Regulation and Safety Act (MMRSA)
Sponsor: Author
Business and Professions Code (BPC) Section 19335; Water Code (WC) Section 1535; and Revenue and Taxation Code (RTC) Section 31020
Effective: January 1, 2017

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

Summary: Among its provisions, this budget trailer bill makes the following changes to the MMRSA:

- Requires the California Department of Food and Agriculture (CDFA) to consult with the BOE when creating the electronic database of shipping manifests to facilitate the track and trace program (BPC Section 19335).
- Provides the BOE read access to the CDFA's electronic database for medical cannabis and medical cannabis product taxation and regulation (BPC Section 19335).

The bill also allows the State Water Resources Control Board (SWRCB) to refer for collection by the BOE a cancelled fee billing for a statement of water diversion and use (WC Section 1535) and repeals the requirement for the BOE to adopt a system for reporting the movement of commercial cannabis and cannabis products through the distribution chain (RTC Section 31020).

Purpose: According to the committee, the purpose is to make various statutory changes necessary to implement the Budget Act of 2016.

Fiscal Impact Summary: No impact to state revenues.

Existing Law: Medical Marijuana Regulation and Safety Act (MMRSA).[1] Under existing law, the MMRSA establishes the Bureau of Medical Marijuana Regulation (Bureau) within the Department of Consumer Affairs to oversee and enforce the state's medical marijuana regulations, in collaboration with the California Department of Public Health (CDPH) and the CDFA. Additionally, it establishes categories of licenses for various medical marijuana activities, such as cultivation, manufacturing, distribution, transportation, and sale.

California's Medical Marijuana Program. Under existing law, the California Uniform Controlled Substances Act[2] prohibits the possession, cultivation, transportation, and sale of marijuana and derivatives of marijuana, except as authorized by law. 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.[3]

Existing law also provides that collectives and cooperatives that cultivate cannabis are not, solely on that basis, subject to certain criminal penalties, including unauthorized possession, cultivation, and transportation of marijuana. This exception expires one year after the Bureau posts a notice on its Internet Web site that the Bureau has commenced issuing MMRSA licenses.

BOE Track and Trace. RTC Section 31020 requires the BOE, in consultation with the CDFA, to adopt a system to report commercial cannabis and cannabis product movement throughout the distribution chain (track and trace). The adopted system must not duplicate the CDFA's electronic database. The system must capture, at a minimum, all of the following:

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[1] Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.
[2] Division 10 (commencing with Section 11000) of the Health and Safety Code (HSC).
[3] HSC Section 11362.5.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

- The amount of tax due by the designated entity.
- The name, address, and license number of the designated entity that remitted the tax.
- The name, address, and license number of the succeeding entity receiving the product.
- The transaction date.
- Any other information the BOE deems necessary for marijuana and marijuana taxation and regulation.

Water Right Fees. Among other things, current law[4] requires each person or entity that holds a permit or license to appropriate water, and each lessor of water, to pay an annual fee according to a fee schedule established by the SWRCB. Each person or entity that files a Notice of Extraction and Diversion, as specified, must pay an annual fee[5] according to a fee schedule established by the SWRCB.

The law[6] allows the SWRCB to send certain unpaid fees to the BOE for collection and requires[7] the BOE to collect all annual fees and other fees referred by the SWRCB. The fees are collected pursuant to the Fee Collection Procedures Law[8] and deposited in the Water Rights Fund in the State Treasury.

Proposed Law: The bill makes several changes to the **MMRSA**, including, but not limited to, changing the term marijuana to cannabis throughout.

With respect to the BOE, this bill requires the CDFA, in consultation with the BOE, to create an electronic database containing the electronic manifest to facilitate the track and trace program. The electronic manifests shall include, but not be limited to, the following information:

- The quantity, or weight, and variety of products shipped.
- The estimated times of departure and arrival.
- The quantity, or weight, and variety of products received.
- The actual time of departure and arrival.
- A categorization of the product.
- The license number and the unique identifier issued by the licensing authority for all licensees involved in the shipping process.

The bill provides the BOE read access to the electronic database for medical cannabis and medical cannabis product taxation and regulation purposes.

Revenue and Taxation Code. This bill repeals RTC Section 31020, which requires the BOE, in consultation with the CDFA, to adopt a system to report commercial cannabis and cannabis product movement throughout the distribution chain.

Statement Fee Collection. The bill amends WC Section 1535 to allow the SWRCB to refer an unpaid fee related to a statement of water diversion and use for cannabis cultivation to the BOE for collection.

Effective Date. As a budget trailer bill that makes an appropriation, this bill becomes effective immediately.

Background: 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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[4] Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the WC.
[5] WC Section 1529.
[6] WC Section 1535.
[7] WC Section 1537.
[8] Part 30 (commencing with Section 55001) of Division 2 of the RTC.

In 2003, Senate Bill 420 (Ch. 875, Stats. 2003, Vasconcellos) established statewide guidelines for Proposition 215 enforcement. In particular, SB 420 allows nonprofit distribution in certain cases for patient cultivation cooperatives, small-scale caregiver gardens, 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.

On August 29, 2013, the U.S. Department of Justice issued guidance to federal prosecutors regarding cannabis enforcement under the CSA (referred to as the Cole Memo).[9] The Cole Memo reiterated the Department's commitment to enforcing the CSA consistent with Congress' determination that cannabis is a dangerous drug that serves as a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. In furtherance of those objectives, the Cole Memo instructed the Department attorneys and law enforcement to focus on the following eight priorities in enforcing the CSA against cannabis-related conduct:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Under the Cole Memo, marijuana-related conduct that implicates one or more of these enforcement priorities should be the primary question when considering CSA prosecution. Although the guidance was issued in response to recent marijuana legalization initiatives in certain states, it applies to all Department marijuana enforcement nationwide.

Operative December 16, 2014, Public Law 113-235[10] prohibits the United States Department of Justice from using funds to prevent specified states, including California, from implementing laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Medical Marijuana Regulation and Safety Act. In 2015, the Legislature enacted the MMRSA, a package of legislation that establishes a comprehensive licensing and regulatory framework for medical marijuana, including cultivation, manufacturing, transportation, distribution, sale, and product. The MMRSA consists of three bills: SB 643 (Ch. 719, McGuire), AB 243 (Ch. 688, Wood), and AB 266 (Ch. 689, Bonta).

Among its provisions, the MMRSA establishes the Bureau within the DCA to oversee and enforce the state's medical marijuana regulations, in collaboration with the CDPH and the CDFA. Additionally, it establishes categories of licenses for various medical marijuana activities, such as cultivation, manufacturing, distribution, transportation, and sale.

AB 266 also added RTC Section 31020 to require the BOE, in consultation with the CDFA, to adopt a system to report commercial cannabis and cannabis product movement throughout the distribution chain (track and trace).

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[9] http://medicalmarijuana.procon.org/sourcefiles/cole-DOJ-memo-aug-2013.pdf

[10] H.R. 83 / Public Law 113-235, Consolidated and Further Continuing Appropriations Act, 2015, (Dec. 16, 2014; 128 Stat. 2130; 701 pages).

Commentary:

1. **Should the BOE have a role in track and trace?** This bill repeals the provision that requires the BOE to establish a track and trace system for tax administration and enforcement. Although those provisions appear related to a proposed excise tax that was not passed by the Legislature, the information captured by the system would be helpful for sales and use tax enforcement under current law. This provision also provides helpful information through the electronic shipping manifests.

   However, the electronic database containing electronic shipping manifest information may not be helpful if the BOE is tasked with the administration and collection of a future excise tax imposed above the retail level (e.g. cultivator, distributor). To collect such a tax, BOE staff suggests providing the BOE the authority to collect such a tax through the use of a tax stamp, product bags, or other method of collecting tax. Since an excise tax seems likely, BOE staff suggests the CDFA also consult with the BOE when establishing the track and trace system to include excise tax payment and other tax enforcement information.

2. **Collection provision not problematic.** This bill authorizes the SWRCB to refer unpaid fees related to a statement of water diversion and use for cannabis cultivation to the BOE for collection. Since the SWRCB currently has the authority to refer other unpaid water right-related fees to the BOE for collection, such as water-related application, registration, petition, and request fees and water quality certificates, as described, this provision will not be problematic to administer.

3. **Related legislation.** SB 837 (Budget and Fiscal Review) is very similar to this measure.

Costs: BOE administrative costs related to this bill are minor. These costs include staff personal services and operating expenses and equipment. A detailed cost estimate is pending.

Revenue Impact: No impact to state revenues.