

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

Date: 08/17/15

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

Summary of Amendments: Among other things, the amendments since the previous analysis revise definitions, authorize the Office to require regulations to be resubmitted by a License Authority, change the date by which no person shall engage in commercial cannabis activity without a license to instead occur once the Licensing Authorities have implemented their regulations, revise the distribution chain, and separate the transportation and delivery provisions.

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, 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**¹ 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 law² 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 Act³ 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.⁴

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

² Sales and Use Tax Law Section 6369.

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

⁴ HSC Section 11362.5.

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Proposition D. Los Angeles city voters passed Proposition D⁵ 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 medical 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:

- 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, distributors, 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 licensing 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 defines "commercial cannabis activity" to mean cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product. The definition excludes a patient or a primary caregiver pursuant to the Compassionate Use Act of 1996.

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 21 members, which includes BOE, each of whom shall be appointed to 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.

⁵ [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. The bill requires the Office to review all Licensing Authority regulations and guidance to ensure no duplication, overlap, conflict, or promulgation of inconsistent regulations between the Licensing Authorities. The Office may require the Licensing Authorities to resubmit regulations to the Office of Administrative Law, as it deems necessary.
- Issue state licenses to persons for the cultivation, distribution, manufacture, transportation, and retail sale of medical cannabis and medical cannabis products within the state;
- Establish procedures and associated fees for the application for the issuance of and renewal of state licenses;
- Establish standards for commercial cannabis activity;
- Establish procedures for the suspension, denial, and revocation of state licenses;
- Impose a penalty authorized by the Act or a rule or regulation adopted pursuant to the Act;
- Approval or denial of 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 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 requires each Licensing Authority to work in conjunction with local agencies for implementation, administration, and enforcement purposes, and for taking appropriate action against a licensee and others who fail to comply with the Act. The Act authorizes peace officers, including 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.

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, specified provisions of the Act shall apply in the City of Los Angeles.

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

- Tracking entities with a Business Tax Registration Certificate of class L050, Medical Marijuana Collective, or its successor classification.
- 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 Division of Medical Cannabis Manufacturing and Testing defined production, labeling, and manufacturing standards, pesticide application standards, 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, transportation security measures, and the Division of Medical Cannabis Manufacturing and Testing-promulgated health and safety regulations.

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 where expressly authorized by local ordinance, as provided.
- Type 10A, or "special dispensary status," for dispensers who have no more than three licensed dispensary facilities. This license allows for delivery where expressly authorized by local ordinance, as provided.
- Type 11, or "distributor," for the certification of the content of all medical cannabis or medical cannabis products and distribution between licensees. A Type 11 licensee shall hold a Type 12, or transporter, license and register each facility location where product is stored for the purposes of distribution. 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 to these categories pursuant to this chapter other than a security interest, lien, or encumbrance on property that is used by a licensee. A Type 11 license shall be bonded and insured at a level no less than the minimum established by the Licensing Authority.
- Type 12, or "transport," for transporters of medical cannabis or medical cannabis products. A Type 12, or "transporter," shall be bonded and insured at a level no less than the minimum established by the Licensing Authority.

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

- Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on non-contiguous plots.
- Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of less than 5,000 square feet of total canopy size on one premises.
- Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the Licensing Authority, of less than 5,000 square feet of total canopy size on one premises.
- Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet of total canopy size on one premises.
- Type 2A, or "small indoor," for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet of total canopy size on one premises.
- Type 2B, or "small mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the Licensing Authority, between 5,001 and 10,000 square feet of total canopy size on one premises.
- Type 3, or "outdoor," for outdoor cultivation using no artificial lighting between 10,001 and 44,000 square feet of total canopy size on one premises.
- Type 3A, or "indoor," for indoor cultivation using exclusively artificial lighting 10,001 and 22,000 square feet of total canopy size on one premises.

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- Type 3B, or “mixed light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the Licensing Authority, between 10,001 and 22,000 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. Type 8 licensees have their facilities licensed according to regulations set forth by the division. 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.

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

- Type 1, 1A, 1B, 2, 2A, and 2B 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, 1B, 2, 2A, and 2B 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, 1B, 2, 2A, and 2B licensees, or a combination thereof, may apply for a Type 10A state license.
- Type 10A licensees, may apply for Type 1, 1A, 1B, 2, 2A, and 2B state license, or a combination thereof.
- Type 11 licensees may apply for a Type 12 license.
- Type 12 licensees may apply for a Type 11 license.

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.

In jurisdictions that, prior to July 1, 2015, adopted a local ordinance allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products, with all commercial cannabis activity being conducted by a single qualified business, upon licensure that business shall not be subject to the above conditions if they meet specified conditions.

The Act prohibits a licensee from also being licensed as a retailer of alcoholic beverages pursuant to the Alcoholic Beverage Control Act.

Distribution Chain. The Act requires all cultivator or manufacturer licensees to send all medical cannabis and medical cannabis products cultivated or manufactured to a Type 11 licensee for quality assurance and inspection by the Type 11 licensee and for a batch testing by a Type 8 licensee prior to distribution to a dispensary.

Those licensees that hold a Type 10A license (a special dispensary license for dispensaries that have no more than 3 licensed facilities) and a cultivation license or a manufacturing license must send all medical cannabis and medical cannabis products to a Type 11 licensee for presale inspection and for a batch testing by a Type 8 licensee prior to dispensing any product. 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.

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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 ensure a random sample of the medical cannabis or medical cannabis product is tested by a Type 8 (Testing) licensee prior to distributing the batch of medical cannabis or medical cannabis products.

Upon issuance of a certificate of analysis by the Type 8 (Testing) licensee that the product is fit for manufacturing or retail, all medical cannabis and medical cannabis products must undergo a quality assurance review by the Type 11 licensee prior to distribution 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 cultivators and manufacturers 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. Medical cannabis and medical cannabis products shall be labeled as required by Section 19346. The Act mandates that all packaging and sealing be completed prior to 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.

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 Authority'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 July 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.

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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 (1) receipt of the application materials and fee, and (2) determination of whether the applicant has not committed any act or crime that constitutes 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 its premises, if:

- There is pending state or local administrative actions or judicial proceedings or other 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
- The person knowingly provides false or fraudulent information on an application for licensure.

Except as provided, the Act further prohibits a Licensing Authority from issuing or renewing a provisional license to an applicant or entity, or any of its officers, directors, or owners, who have been convicted, as defined, of certain felonies.

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. 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 is exempt from the licensure requirements.

The Act also does not consider a primary caregiver 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 to be engaged in commercial cannabis activity. The Act exempts such primary caregivers from the licensure requirements.

Regulations. The Act requires a Licensing Authority to promulgate regulations for implementation of its respective responsibilities in the 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 and establishing related fines and penalties to be assessed against licensees for a violation of the Act.
- 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).

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- 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 to prevent diversion of product to nonmedical use 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 licensed 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.
- Establish procedures and protocols to identify, manage, and dispose of contaminated, adulterated, deteriorated, or excess product.
- Establish advertising, marketing, signage, and labeling requirements and restrictions.
- Establish procedures for state license suspension, revocation, or surrender.

The Act authorizes each Licensing Authority to adopt regulations for additional licenses for commercial 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 three 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 and medical cannabis products, personnel policies, and recordkeeping procedures.
- Submit the applicant's fingerprint images, as described.

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- 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.
- 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 complete, true, and accurate.
- 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,
- Determine whether the applicant complies with the Act, and
- Investigate all relevant matters 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.

A 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 involving dishonesty, fraud, deceit, or gross negligence with the intent to substantially benefit himself, herself, or another, or to substantially injure another.
- 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.

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- 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 commercial cannabis activities.
- 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 possession of a controlled substance.
- 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.
- Unless otherwise provided, the applicant, or any of its officers, directors, or owners, has been convicted of a crime or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made.
- 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 subject to fines or penalties for cultivation or production of a controlled substance on public or private lands, as provided.
- 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 cannabis activities or has had a license revoked under the Act in the previous three years.
- The proposed commercial 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 three 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.
- There are pending state or local administrative actions, judicial proceedings, or other actions initiated against the applicant, by a city, county, or city and county under an applicable local ordinance, or who has been determined through those proceedings to have violated a local ordinance related to commercial cannabis activity, or that knowingly provides false or fraudulent information on an application for licensure.

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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.

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 medical cannabis products without a license.
- Transporting medical cannabis or medical cannabis products from one facility issued a state license to another without a license.

The Act prohibits a licensee from cultivating, processing, storing, manufacturing, transporting, or selling medical cannabis or medical cannabis products 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 and lot of product:

- The name, address, and license number 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.

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- Enter and inspect the premises of a 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 upon request.

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 11362.7.⁶

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

- Complete an electronic shipping manifest as prescribed by the Licensing Authority.
- Securely transmit the manifest to the Licensing Authority and the licensee that will receive the medical cannabis product.

During transportation, 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 Act requires a Licensing Authority, upon knowledge that a licensee has transported, arranged for or facilitated the transport of medical cannabis or medical cannabis products, to summarily suspend that license and commence revocation proceedings.

The bill authorizes any entity licensed with the Division of Medical Cannabis Cultivation, the Division of Medical Cannabis Manufacturing and Testing, and Division of Medical Cannabis Regulation (license Type 10 and Type 10A only) to transport between medical cannabis and medical cannabis products licensees in amounts below the statewide minimum, set by the BOE.

⁶ Medical Marijuana Program.

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The Act requires the 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; a categorization of the product, and the BOE issued license number.

The Act also requires the database designed to flag irregularities for a Licensing Authority to investigate. Licensing Authorities and state and local agencies may, at any time, inspect shipments and request documentation for current inventory.

The Act shall not be construed to authorize or permit a licensee to transport, or cause to be transported, 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.

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.

Delivery. The Act specifically prohibits all deliveries, except as otherwise provided. Deliveries may only be made by an appropriately licensed dispensary.

Upon approval of the BOE, the Act requires a licensed dispensary authorized to deliver medical cannabis or medical cannabis products to abide by the following:

- The city, county, or city and county in which the licensed dispensary is located, and in which each delivery is made, must specifically and by ordinance permit delivery.
- All employees delivering medical cannabis or medical cannabis products must carry a current license authorizing those services during deliveries and a government-issued identification, and must present that license and identification upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this chapter.

The Act requires the BOE to summarily suspend that facility's license and commence without delay proceedings for the revocation of the license if the BOE knows 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.

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

The Act authorizes a licensed transporter to transport medical cannabis products to an unlicensed dispensing facility within the City of Los Angeles, provided specified conditions are met.

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.
- 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.

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All license fees collected by the Licensing Authority pursuant to this chapter shall be deposited in a fee account specific to that Licensing Authority, to be established in the Medical Cannabis Regulation Fund. All moneys in the Licensing Authority accounts must be used, upon appropriation, by the designated Licensing Authority for the Act's administration.

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 to the BOE 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.

In subsequent legislation, the Legislature intends 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 regulations 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.

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.

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The Act requires the Office to establish and oversee procedures to provide 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 procedures must include, but not be limited to, the authorization of state and local law enforcement agencies, agencies, and License Authorities 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 upon the implementation of Licensing Authority regulations, 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 within 20 days to determine whether the evidence is sufficient to constitute grounds for the revocation of the license 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.

Definitions. The Act defines the following terms, as relevant to the BOE:

- "Cannabis" means all parts of the plant *Cannabis sativa* L., *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. Without limiting the definition, "cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

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- “Caregiver” or “primary caregiver” has the same meaning as that term is defined in HSC Section 11362.7.
- “Commercial cannabis activity” means cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, except as set forth with respect to a qualified patient or a primary caregiver.
- “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the BOE, to a primary caregiver or qualified patient, a testing laboratory, or to an event or location where it will be used solely for promotional purposes. Delivery also includes the use by a dispensary of a third party or any technology platform that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer of medical cannabis or medical cannabis products.
- “Dispensary” means a physical retail establishment operating from a fixed location, including mobile deliveries that are expressly authorized by local ordinance originating from the location that makes retail sales of medical cannabis or medical cannabis
- “Dispensing” means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.
- “Distribution” means the procurement, sale, and transport of medical cannabis and medical cannabis products purchased and sold between licensed entities.
- “Distributor” means a person who is engaged in the business of purchasing medical cannabis from a licensed cultivator or medical cannabis products from a licensed manufacturer in order to distribute to other licensees.
- “Licensed dispensing facility” means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are provided, either individually or in any combination, and that is issued a state license and a local license or permit.
- “Licensed transporter” means a person issued a state license by the BOE to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the BOE between facilities that have been issued a state license or to dispensing facilities in the City of Los Angeles pursuant to this chapter.
- “Medical cannabis,” “medical cannabis product,” or “cannabis product” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215).
- “Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.
- “Transport” means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, or to dispensing facilities in the City of Los Angeles, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

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.

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.

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The sale of medical marijuana⁷ 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. Summary of amendments.** The **August 17, 2015 amendments**, among other things, authorize the Office to require regulations to be resubmitted by a License Authority, change the date by which no person shall engage in commercial cannabis activity without a license to instead occur upon implementation of regulations by the Licensing Authorities, revise the distribution chain, and separate the transportation and delivery provisions. The **July 13, 2015, amendments**, in part, required the BOE to hire the Division of Medical Cannabis Regulation director rather than requiring a Governor's appointment and prohibited any licensee from also holding an Alcoholic Beverage Control license. 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 language is repetitive and confusing.** This Act requires all cultivation and manufacturing licensees to send medical cannabis and medical cannabis products cultivated or manufactured to a Type 11 licensee (BOE-licensed distributor) for "*quality assurance and inspection.*" A Type 10 licensee (BOE-licensed special dispensary status) that also holds a cultivation license must send all medical cannabis and medical cannabis products to a BOE-licensed distributor for "*presale inspection*" and for a batch testing by a Type 8 licensee (laboratory).

The Act also requires a BOE-licensed distributor to first *inspect* the medical cannabis and medical cannabis products upon receipt of such products from a licensed cultivator or manufacturer to *ensure the product's identity and quantity*. The BOE-licensed distributor must also ensure a random sample is tested by a Type 8 licensee prior to distribution.

Upon issuance of analysis by the Type 8 licensee that the product is fit for manufacturing and retail, the medical cannabis and medical cannabis products must undergo a "quality assurance" review by a BOE-licensed distributor to ensure the quantity and content.

It appears to BOE staff that Section 19325(e) duplicates Section 19325(f)(1) and (2) in requiring that all cultivators and manufacturers of medical cannabis and medical cannabis products send them to a distributor for inspection, quality assurance review, and testing. If BOE staff understands the author's intent, Section 19325(e) and (f)(1) and (2) should be combined and simplified.

Section 19325(f)(2) states that the "quality assurance" review must be conducted by the BOE-licensed distributor. Section 19344(c) tasks the Division of Medical Cannabis Manufacturing and Testing with promulgating quality assurance standards regulations. Should the Type 8 licensee, whose license is issued by the Division of Medical Cannabis Manufacturing and Testing, conduct the quality assurance review?

Lastly, the Act requires the BOE to issue a Type 11, distributor's license for content certification of all medical cannabis and medical cannabis products and distribution to licensees. However, the Act does not clearly state what is meant by "content certification," which is not referenced anywhere else in the Act.

⁷ All retail sales, including illegal sales, are subject to tax.

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- 3. Administrative program start-up cost funding essential.** This bill enacts a BOE-regulatory framework with respect to distributors, dispensaries, and transporters to start 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.

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.**

- 4. Track and trace and transportation database.** The bill requires the BOE to submit a request for proposal (RFP) regarding a medical cannabis and medical cannabis product tracking system by March 31, 2016. 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. BOE staff also requests a delay for the RFP due date to June 1, 2016. This delay allows the BOE the **necessary** time to prepare a successful RFP on a brand new product.

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. The BOE staff has provided language to the author's office to combine the transportation database with the track and trace program, which streamlines the contract process.

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.

BOE staff also suggests a delay for licensed transporters to complete an electronic shipping manifest and securely transmit the manifest to the BOE until the transportation database is functional. Without such a delay, licensed transporters cannot comply with the Act's shipping manifest requirements.

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.

- 5. Technical suggestions.** The BOE staff has the following cost saving and non-substantive corrections for the author's consideration:

- The Act requires the BOE to deposit civil penalties collected for engaging in commercial cannabis activity into the Medical Cannabis Fines and Penalties Account. The Act also requires the BOE to deposit all fees collected into a fee account specific to that Licensing Authority, to be established in the Medical Cannabis Regulation Fund. The BOE staff suggests the BOE deposit all revenues

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collected pursuant to the Act into the same account (the fee account specific to the BOE) with the civil penalties collected from unlicensed persons later transferred to the Medical Cannabis Fines and Penalties Account. The suggestion simplifies the BOE's accounting function and therefore reduces administrative costs.

- Amend Section 19334(c)(1) to read: Type 10, or "dispensary," for the retail sale of medical cannabis or medical cannabis products. This license shall allow for delivery where expressly authorized by local ordinance, pursuant to subdivision (b) of Section 19340.
- Amend Section 19334(c)(3) to read: Type 11, or "distributor," for the certification of the content of all medical cannabis or medical cannabis products and distribution to licensees. A Type 11 licensee shall hold a Type 12, or transporter, license and register each facility location where product is stored for the purposes of distribution. A Type 11 licensee shall not hold a license in a cultivation, manufacturing, dispensing, or testing license category and shall not own, or have an ownership interest in, a facility licensed in those categories other than a security interest, lien, or encumbrance on property that is used by a licensee. A Type 11 licensee shall be bonded and insured at a minimum level established by the Licensing Authority.
- The Act should clarify that Section 19340(g) and (h) shall be administered by the California Highway Patrol, similar to the transportation requirement in Section 19337.

Administrative Costs: BOE administrative costs related to this bill are substantial. These costs include: extensive outreach, 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. These costs are estimated to be \$8.5 million in fiscal year (FY) 2015-16, \$7.0 million in FY 2016-17, \$6.3 million in FY 2017-18, and \$5.8 million ongoing.

These costs do not include costs for the BOE to contract for the track and trace program or the transportation database as these costs are unknown.

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