

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

Program: Medical Marijuana Regulation and Safety Act

Sponsor: Author

RTC Section 31020

Effective: January 1, 2016

Michele Pielsticker (Chief) 916.322.2376

Cindy Wilson (Analyst) 916.445.6036

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

Summary: Among other things, this bill requires the BOE, in consultation with the California Department of Food and Agriculture (CDFA), to adopt a system for reporting the movement of commercial cannabis and cannabis products throughout the distribution chain.

Purpose: To establish comprehensive, statewide licensure and regulations for commercial medical cannabis activity that protect patients, promote public safety, and preserve the environment, while maintaining respect for local control.

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

Existing Law: Sales and Use Tax Law. Except where the law specifies an exclusion or exemption, California's Sales and Use Tax Law¹ 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, under certain conditions, including 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

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 Marijuana Regulation and Safety Act** (Act). The Act establishes a comprehensive licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana.

The Act requires the Department of Consumer Affairs (DCA), the Department of Public Health (CDPH) and CDFA to administer the Act's licensing and regulatory framework and to promulgate regulations to implement their respective responsibilities.

The Act also establishes the Bureau of Medical Marijuana Regulation (Bureau) within the DCA under the Bureau Director's supervision and control.

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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Revenue and Taxation Code. This bill adds 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). The adopted system must not duplicate the CDFA's electronic database, as specified in BPC Section 19335. The BOE's adopted system must also employ secure packaging and provide information to the BOE. The bill requires the system to capture, at a minimum, all of the following:

- 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.

Related Legislation. Senate Bill 643 (McGuire) adds BPC Section 19335 to the Act to require the CDFA, in consultation with the Bureau, to establish a track and trace system to report medical marijuana item movement through the distribution chain that utilizes a **unique identifier program**. Section 19335 also requires the CDFA to create an electronic database that contains electronic shipping manifests, as described.

Assembly Bill 243 (Wood) adds HSC Section 11362.777 to require the CDFA to implement a medical marijuana **unique identification program**, in consultation with, including but not limited to, the Bureau, SWRCB, and the Department of Fish and Wildlife. That bill requires the unique identifier to be issued and attached at the base of each medical marijuana plant.

Operative Date. This bill becomes operative January 1, 2016, but only if SB 643 and AB 243 of the current legislative session are enacted and take effect on or before January 1, 2016.

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.

The sale of medical marijuana⁵ 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 lawful and 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 **September 11, 2015, amendments**, as they relate to the BOE, require the BOE to adopt a system to report commercial cannabis and cannabis product movement throughout the distribution chain. The system must also employ secure packaging and capture specified information. The **September 4, 2015, amendments** added to the Medical Board of California's list of priority cases repeated acts of clearly excessive cannabis recommendations to patients. These amendments did not impact the BOE. The **September 1, 2015, amendments** gutted and amended the bill to simply state legislative intent to enact legislation to establish a comprehensive regulatory framework for medical marijuana in the state. The **August 17, 2015, amendments**, among other things, authorize the Governor's Office of Medical Cannabis Regulation

⁵ All retail sales, including illegal sales, are subject to tax unless a specific exclusion or exemption applies.

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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 Governor's Office of Marijuana Regulation and created a multi-agency licensing framework that includes the BOE.

- 2. Track and trace.** This bill requires the BOE to adopt a specified track and trace system that also employs secure packaging. The track and trace system must be capable of capturing specified data that relates to a proposed cannabis tax.

While AB 243 proposed a cannabis tax, the tax provisions were amended out of that bill on September 4, 2015. On September 11, 2015, Assembly Member Wood introduced [AB 1548](#), which imposes upon all cultivators a per-ounce tax on all cannabis flowers, leaves, and immature plants to be collected by the distributor at the time of sale. AB 1548 identifies the distributor as the entity that remits the tax, while AB 266 identifies a "designated entity" as the taxpayer.

The author of any future cannabis bill may wish to consider amending RTC Section 31020 to conform the taxpayer references.

- 3. Unique identifier.** SB 643 requires the CDFA, in consultation with the Bureau, to establish a track and trace system that utilizes a unique identifier. That unique identifier must also report medical marijuana item movement throughout the distribution chain. For the unique identifier to report movement through the distribution chain, it appears that the unique identifier information may have to be captured within the BOE's adopted system. However, the author may intend for the unique identifier to be tracked only through the CDFA's electronic database for shipping manifests. RTC Section 31020 states that the BOE's system must not duplicate the CDFA's electronic database.

Staff also notes that BPC Section 19347, which this bill adds, requires that medical cannabis products be labeled, in part, with the unique identifier information prominently displayed and in a clear and legible font prior to delivery or sale at a dispensary.

Since this bill requires the BOE to consult with the CDFA to adopt a track and trace system, the question of whether or not the BOE's system should capture the unique identifier information can be resolved during the system's development.

Administrative Costs: BOE administrative costs related to this bill are substantial. These costs include staff time to develop the Request For Proposal (RFP) for potential bidders, proposal evaluation, vendor contract award and vendor support, implementation, and continued administration of the track and trace system. These costs are estimated to be \$426,000 for Fiscal Year (FY) 2015-16, \$620,000 for FY 2016-17 and ongoing.

These costs do not include costs for the track and trace program vendor contract or to employ secure packaging as these costs are unknown. In addition, these costs may increase with the enactment of a future cannabis excise tax.

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

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