Assembly Bill 1575 (Bonta, et al)
Date: 06/13/16
Program: Medical Marijuana Regulation and Safety Act (MMRSA)
Sponsor: Author
Business and Professions Code (BPC) Section 19310.5
Effective: January 1, 2017

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

Summary: Requires the Board of Equalization (BOE) to form an advisory group to examine and report to the Legislature proposed changes to state laws or regulations to improve the medical cannabis industry's access to banking services.

Summary of Amendments: Since the previous analysis, the amendments to the bill require a collective or cooperative to include their valid seller's permit number in any advertisement.

Purpose: According to the author, the purpose is to make MMRSA implementation smoother and further the intent of that act.

Fiscal Impact Summary: No impact to state revenues.

Existing Law: **Federal Law.** Existing federal law prohibits the manufacture, possession, sale, or distribution of marijuana.[1] Congress enacted the Controlled Substances Act (CSA)[2] as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970. The CSA establishes five "schedules" of certain drugs and other substances designated "controlled substances."[3] For a drug or other substance to be designated as a schedule I controlled substance, it must be found that the substance "has a high potential for abuse," has "no currently accepted medical use in treatment in the United States," and "lack accepted safety for use of the drug or other substance under medical supervision."[4] Federal law lists marijuana as a schedule I controlled substance, deemed to have no accepted medical use.[5]

Medical Marijuana Regulation and Safety Act (MMRSA).[6] 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 California Department of Food and Agriculture (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[7] 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.[8]

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.

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[1] 21 U.S.C. § 841 et seq.
[2] 21 U.S.C. § 801 et seq.
[3] 21 U.S.C. §§802(6), 812(a).
[4] 21 U.S.C. § 812 (b)(1).
[5] 21 U.S.C. § 812:Schedule I(c)(10).
[6] Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.
[7] Division 10 (commencing with Section 11000) of the Health and Safety Code (HSC).
[8] 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.

California's Sales and Use Tax Law.[9] Existing law imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer, except where the law specifies an exclusion or exemption. Nothing in the sales and use tax law exempts or excludes the sale of illegal substances. Therefore, under the law, sales and use tax applies to retail sales of marijuana, including medical marijuana, to the same extent as any other retail sale of tangible personal property.

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 BOE to form an advisory group, in conjunction with the DBO, that consists of representatives from financial institutions, nonbank financial service providers, the medical cannabis industry, and federal banking regulators. The advisory group will examine strategies to improve financial monitoring of medical cannabis business, including integrated point-of-sale systems with state track and trace systems.

By July 1, 2017, the BOE, in conjunction with the Department of Business Oversight (DBO), must submit a report to the Legislature with recommendations that will improve financial monitoring for cannabis businesses. The report shall be submitted in compliance with Government Code (GC) Section 9795. The report requirement becomes inoperative on July 1, 2021, pursuant to GC Section 10231.5.

The bill also makes changes to Health and Safety Code (HSC) Section 11362.775 within the **California Medical Marijuana Program** to provide protections from specified criminal penalties to a collective or cooperative that operates for profit, not for profit, or any combination thereof. However, for-profit collectives and cooperatives must possess a valid BOE-issued seller's permit and a valid local license, permit, or other authorization to retain protection from the specified criminal penalties.

Furthermore, HSC Section 11362.775 makes it unlawful for described persons who associate to collectively or cooperatively cultivate cannabis for medical purposes to submit for placement an advertisement that fails to include in the text the collective or cooperative's valid BOE-issued seller's permit number. These persons include "qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards." "Advertisement" means a notice, announcement, or information in a public medium, including, but not limited to, television, Internet Web site, billboard, or printed publication that promotes a location where medical cannabis is sold or dispensed or a service that is involved in medical cannabis delivery. A violation results in an infraction punishable by a $500 fine.

HSC Section 11362.775 provides a collective or cooperative shall not be subject to specified manufacturing-related criminal sanctions if the collective or cooperative abides all of the following:

- Utilizes only nonvolatile solvents, as provided in the MMRSA, or regulations adopted pursuant to that act.
- Possesses a valid BOE-issued seller's permit.
- Possesses a valid local license, permit, or other authorization specific to medical cannabis manufacturing, as defined.

The bill becomes effective January 1, 2017.

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.

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.

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

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).[10] 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[11] 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.

In General: As discussed under existing federal law, the CSA makes it illegal to manufacture, distribute, or dispense marijuana as a Schedule I Controlled Substance. As a result, banks and credits unions cannot provide banking services to medical cannabis operations without the threat of criminal prosecution.

On February 14, 2014, the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) issued guidance to clarify Bank Secrecy Act expectations for financial institutions seeking to provide services to marijuana-related businesses and to provide direction for Cole Memo compliance. The guidance allows banks to work with marijuana-related businesses that operate in compliance with state laws and regulations. The guidance also creates a three-tier system for filing Suspicious Activity Reports (SARs) regarding marijuana-related businesses. Financial institutions that elect to bank cannabis-related businesses continue to face an additional threat to participate in the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Administration (NCUA), which guarantees deposits for credit unions similar to the FDIC's guarantee for bank deposits.

[10] http://medicalmarijuana.procon.org/sourcefiles/cole-DOJ-memo-aug-2013.pdf
[11] H.R. 83 / Public Law 113-235, Consolidated and Further Continuing Appropriations Act, 2015, (Dec. 16, 2014; 128 Stat. 2130; 701 pages).

Many financial institutions elect not to bank cannabis-related businesses. This forces medicinal cannabis-related businesses to operate on a cash-basis, thus creating a public safety issue. In addition, medical cannabis-related businesses are not able to make tax and fee payments to state agencies that do not accept cash payments. For example, all BOE field offices stopped accepting cash from taxpayers attempting to pay their sales or use tax liabilities. This "No Cash Policy" allows BOE to reduce costs and ensure safety to its employees. The BOE allows an exception when a taxpayer can document that they are unable to obtain a bank account, as is frequently the case with marijuana-related businesses. However, accepting such large cash payments creates an enormous safety risk to the public and BOE staff.

Commentary:

1. **The June 13, 2016 amendments** (1) require a collective or cooperative to include in the text of an advertisement their valid seller's permit number and (2) provide protection from manufacturing-related criminal sanctions to collectives and cooperatives that meet certain requirements. The **April 25, 2016 amendments** required the BOE to form an advisory group in conjunction with the DBO. **The April 13, 2016 amendments** provided certain criminal penalty protections to a for-profit collective or cooperative with a valid BOE-issued seller's permit. The **April 4, 2016 amendments** made it unlawful to display an advertisement that promotes a dispensary without first verifying a valid BOE-issued seller's permit.

2. **Report date.** This bill requires the BOE to submit a specified report to the Legislature by July 1, 2017. It appears questionable whether an advisory group can be formed, identify proposed changes to state law or regulations that would improve banking access, and submit a report by July 1, 2017. The author may wish to consider delaying the report date to provide sufficient time for the advisory group to solve such a complicated issue.

3. **Seller's permit verification.** The bill amends the California Medical Marijuana Program to provide protection from certain criminal penalties to a for-profit collective or cooperative that possesses a valid BOE-issued seller's permit. Also, the program makes it unlawful to display an advertisement that promotes a dispensary without first verifying a valid BOE-issued seller's permit. These provisions would not be problematic since the BOE's web site provides a link for seller's permit verification. The Sales and Use Tax Permit Verification link confirms the owner name, business name, and address and a whether a permit is valid, including start date, or the date permit was closed.

4. **Related legislation.** AB 2149 (Bonilla) authorizes the BOE to enter into agreements with specified state agencies to collect cash payments from medical marijuana-related businesses.

   SB 837 (Budget and Fiscal Review Committee) and AB 1609 (Budget Committee) make various statutory changes to the MMRSA in order to implement the state administration-related provisions of the Budget Act of 2016.

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

Revenue Impact: No impact to state revenues.