Department of Consumer Affairs, Bureau of Cannabis Control
Proposed Trailer Bill Legislation

200 – Cannabis Regulation

FACT SHEET

Justification for Proposed Law Changes: The first priority of the Administration in implementing the new regulatory system that will govern the cannabis industry in California is to protect public and consumer safety. The Administration also seeks to safeguard local control over the industry and that the industry complies with all of California's environmental laws. Implementing a new state regulatory system for medicinal cannabis is a significant undertaking that was made more complicated by the legalization of adult use cannabis this past November (Proposition 64) that overlays a separate and different regulatory structure for the cannabis industry.

As the state moves forward with the regulation of both medicinal cannabis and adult use, one regulatory structure for cannabis activities across California is needed to maximize public and consumer safety. Furthermore, implementing the statutes separately would result in duplicative costs and inevitable confusion among licensees, regulatory agencies and the public. While many components of the regulatory structure are proposed to be harmonized, the administration proposes to preserve the integrity and separation of the medicinal and adult use industry by maintaining these as two separate categories of license types with the same regulatory requirements for each. The amendments proposed by the administration seek to clarify and enhance both Proposition 215 and AUMA as passed by the voters by allowing for a clear regulatory structure and eliminating ambiguity.

Although California has chosen to legalize cannabis, federally it remains an illegal Schedule I drug. Protecting against illegal diversion of cannabis inside and outside of the state is an important public safety issue, which is why the state is implementing a robust track and trace program that will track all cannabis from seed to sale.

Furthermore, to protect public health and safety the state has assumed some food and drug responsibilities that would normally fall to the federal government. These duties range from creating pesticide use guidelines for cannabis to standardizing tetrahydrocannabinol (THC) levels in a product. The safety of the product is not dependent on whether it is purchased for adult use or medicinal purposes. This distinction becomes important only at the point of sale where different age restrictions and sales taxes apply.

Background: In 1996, voters approved Proposition 215, which legalized the use of medicinal cannabis in California. Since the proposition was passed most regulation was done by local governments.

In 2015, California enacted three bills —AB 243 (Wood, Chapter 688); AB 266 (Bonta, Chapter 689); and SB 643 (McGuire, Chapter 719)—that collectively established a comprehensive state regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery and testing of medicinal cannabis in California. This regulatory scheme is known as the Medical Cannabis Regulation and Safety Act (MCRSA). Senate Bill 837 (Committee on Budget, Chapter 32, Statutes of 2016) built upon the MCRSA framework and added comprehensive environmental safeguards that require the State Water Resources Control Board, in consultation with the Department of Fish and Wildlife, to adopt principles and guidelines governing the use of water for cannabis cultivation with the goal of protecting streams and rivers from illegal diversion.

In November of 2016, voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). Under Proposition 64, adults 21 years of age or older can legally grow, possess, and use cannabis for non-medicinal purposes, with certain restrictions. In addition, beginning on January 1, 2018, AUMA makes it legal to sell and distribute cannabis through a regulated business.

Summary of Changes: Below are some of the key differences between AUMA and MCRSA and the Administration's proposed solutions for addressing these issues:

Dual State and Local Licensing:

Under MCRSA, a local permit, license, or other authorization is a prerequisite for obtaining a state license. Under this law, the applicant is responsible for providing proof of compliance with these local requirements to state licensing authorities.

Under Proposition 64, adult-use cannabis businesses must be in compliance with any local ordinance or regulation in order to obtain a license, but the burden is on the state licensing authorities to determine whether or not businesses are in fact in compliance.

Proposed solution:

With 58 counties and 482 cities, it is unrealistic to expect the licensing entities to verify that each applicant is in compliance with *any* local law or regulation. The proposed solution does the following:

1) Since, the state licensing authorities cannot require applicants to show proof of a local permit, new language will require the Bureau to work with local jurisdictions to collect all the ordinances that govern cannabis in the state, including those that have bans. Also, local jurisdictions shall be responsible for providing the contact for their jurisdiction, so that state licensing entities know who to call when questions arise about an applicant.

2) Authorizes an applicant to voluntarily submit a copy of the permit, license, or local authorization to the state licensing entities for jurisdictions that have taken action to regulate cannabis and have completed a programmatic Environmental Impact Report (EIR) in order to issue local permits.

3) In instances where a local jurisdiction allows cannabis business to operate, but does not issue permits, then the applicant will be responsible for submitting the EIR for certification to the state licensing entity. This will be similar to how a land developer has to work on their own EIR before a project moves forward.

4) As an incentive for locals to take on more of the environmental compliance work, a narrow CEQA streamlining is proposed for local jurisdictions that moves forward to regulate.

The proposed solution maintains local autonomy of zoning and planning decisions while providing state regulators with local compliance information in a timely manner.

Vertical Integration:
MCRSA places restrictions on the number and type of licenses cannabis business may acquire. There are 17 license classifications and six licensure categories (cultivation, manufacturing, testing, dispensary, distributor, and transporter). Under MRCSA licensees can hold up to two separate license categories, with the exception of testing and distribution. The restrictions seek to limit the ability of one entity to control multiple steps in the cultivation, distribution, and retail chain.

AUMA does not include prohibitions against holding multiple licenses. The only exception is that a testing licensee cannot hold a license or ownership interest in any other category.

Proposed Solution:
The Administration proposes to maintain AUMA's vertically integrated licensing structure for both adult use and medicinal cannabis licensees. Overly restrictive vertical integration stifles new business models and does not enhance public and consumer safety. AUMA has restrictions to protect against the over concentration of licenses in areas as well as monopolies. It also requires that testing licensees to be independent of all licensees in other categories.

Distribution:
Under MCRSA, all medicinal cannabis and medicinal cannabis products are required to go through a third-party distributor. The distributor is responsible for arranging testing of the flower or cannabis product prior to it going to market. A distributor can hold a transportation license, but is precluded from holding any other license type.

Under AUMA, a distribution license regulates only transportation activities and allows a distributor to hold any other license except for a testing license. Proposition 64 allows for both third-party and in-house distributors owned by licensed cultivators, manufacturers, and retailers. Under AUMA, the responsibility for testing cannabis or cannabis product falls on the licensee taking the product to market.

Proposed solution:
The Administration proposes to maintain the AUMA's open distribution model. Allowing for a business to hold multiple licenses including a distribution license will make it easier for businesses to enter the market, encourage innovation, and strengthen compliance with state law. To ensure the integrity of the testing is maintained, all distributors must arrange for an independent licensed testing laboratory to select a random sample, transport it to a laboratory, and test the product.

Ownership:
The definition of an applicant varies in MCRSA and AUMA depending on the level of ownership. MCRSA defines applicant as any person having decision making authority or an ownership or

financial interest. Under MCRSA, all applicants and those having a five percent interest or more in a publicly-traded company are required to pass a background check.

AUMA only requires a background check for licensees having at least a 20 percent ownership and having direct management authority.

Proposed Solution:
The administration proposes two separate definitions for applicant and owner. For ease of administration, only one designee will be required as the applicant. Owners must pass a background check under both systems. The administration proposes to adopt the AUMA definition of owner of having at least 20 percent ownership, or any person with the power to impact management decisions. In addition, with the exception of publicly traded companies, licensees must disclose the identity of all investors to the licensing authorities.

Cultivation limits:
MCRSA includes a limit on the scale of cultivation and the number of medium size (Type 3) licenses than can be issued. Most cultivation licenses authorize a maximum of 1 acre of cultivation. The Type 10A multiple-cultivation license allows a maximum of 4 acres of cultivation, although the 4 acre limit sunsets on January 1, 2026.

AUMA added a new cultivation license type not included in MCRSA, the Type 5, which allows large size cultivation of over 1 acre or greater than 22,000 square feet indoors. This license type cannot be issued until January 1, 2023. AUMA does not limit the number of medium size (Type 3) licenses that can be issued.

Proposed Solution:
In furtherance of the intent of Proposition 64 to prevent illegal production and avoid illegal diversion to other states, the administration proposes to limit the number of Type 3 licenses consistent with MCRSA.

Microbusinesses:
AUMA establishes a new license type called microbusiness which was not included in the MCRSA. A microbusiness is authorized to engage in activities in four market segments: cultivation, manufacturing using non-volatile solvents, distribution, and retail. Unlike other license types, a microbusiness would only require a license from the Bureau.

Proposed Solution:
In order to protect the public health and safety and compliance with state environmental laws, the California Department of Food and Agriculture and the Department of Public Health must also review microbusiness licensees. The Administration proposes a process whereby licensing authorities shall establish a process to ensure that a microbusiness applicant and licensee can demonstrate compliance with all the requirements under the law for the activity or activities they conduct.

Environmental Protections:
Senate Bill 837 (SB 837), Committee on Budget, Chapter 32, Statutes of 2016, was legislation that clarified the roles of the appropriate state environmental entities, all of which must coordinate with

the California Department of Food and Agriculture (CDFA) before a cultivation license is issued. For example, SB 837 requires that all CDFA licenses include a pending application, registration, or other water right documentation that has been filed with the State Water Resources Control Board. SB 837 clarifies that the State Water Board has enforcement authority if water is diverted or illegally used for cannabis cultivation.

Proposed Solution:
Due to the timing of the passage of the above legislation, the drafters of the AUMA were unable to conform to the changes made in SB 837. The administration proposes to amend the AUMA to include the same environmental protection requirements as MCRSA.

Appeals Panel:
AUMA establishes a Marijuana Control Appeals Panel (Panel), consisting of three members appointed by the Governor and subject to the confirmation by the Senate. Any applicant or licensee can appeal to the Panel to review a penalty, a license issuance, denial, or other adverse action by any of the licensing authorities. This panel was not contemplated in MCRSA.

Proposed Solution:
The administration proposes to extend the review of the panel to all licensing decisions relating to cannabis. The Panel will streamline the appeals process and bring needed expertise and due process to the review of any licensing decision. The language allows a party to appeal a Panel decision directly to the Court of Appeals, which is similar to how the Alcoholic Beverage Control Appeals Board works.

Appellation:
Appellation of origin is a legally-defined and protected geographic indication usually used for wine and certain food. Appellation of origin is typically determined by the federal government.

Because the federal government will not establish appellations, MCRSA authorizes the California Department of Food and Agriculture to establish appellations of origin for cannabis.

The AUMA also addresses appellation of origin, but instead requires the Bureau to establish standards by of January 1, 2018.

Proposed Solution:
In order to provide sufficient time and expertise to establish and set standards for appellations of origin, the initiative should be amended to transfer the responsibility to establish appellation of origin from the Bureau to the California Department of Food and Agriculture and extend the deadline to accomplish this to January 1, 2020.

Other Changes:

Deletion of requirement for state issued medicinal ID cards:
SB 420 (Chapter 875, Statutes of 2003) established a voluntary registry identification card system, maintained by Department of Health Services, for patients that have a recommendation from their doctor to use medicinal cannabis. The card was intended to provide some protection to the

cardholder from arrest and prosecution for possession, transportation, and cultivation of marijuana for medicinal purposes.

Approximately 80 percent of cannabis patients do not currently use medical cannabis identification cards, but instead use their physician recommendation to purchase medical cannabis. The identification card in its current form cannot be used to confirm the identity of any individual as it contains no identifying information other than a photo and the name of the county from which it was obtained. The photo and county name is also the only information maintained by the state.

Proposed Solution:

The administration proposes to delete the requirement for state issued medicinal ID cards and provides the county with the authority to issue local cards.