

BUREAU OF CANNABIS CONTROL

Bureau Chief: Lori Ajax ♦ (833) 768-5880 ♦ Internet: www.bcc.ca.gov

The Bureau of Cannabis Control (BCC) is a consumer protection agency within the state Department of Consumer Affairs (DCA). BCC is charged with enforcing current regulatory law pertaining to the sale of both medical marijuana, and now the recently approved marketing of recreational cannabis.

The BCC regulatory mechanism covers aspects of marijuana sale, subject to a complex array of continuing issues. The major historical steps include two failed efforts in 1994 and 1995. These include SB 1364 to reclassify cannabis as a Schedule II drug at the state level and then AB 1529 the following year to create a “medical necessity defense” allowing its use where physician prescribed. Both of these bills were vetoed by then Governor Pete Wilson, but the populace approved Proposition 215 in 1996 legalizing its production and use by patients with physician approval for treatment of cancer, anorexia, AIDS, MS, glaucoma or “any other illness for which marijuana provides relief.” Medical cannabis ID cards are issued by the California Department of Health, with over 37,000 issued by the end of 2009. Even this system of physician approved dispensing conflicted with federal law, where marijuana has remained a Schedule 1 prohibited drug. Similar marijuana allowance laws in other states have created a continuing conflict with federal law—although federal authorities have adopted a policy of relative tolerance to state permission.

In 2010, the effort to broaden cannabis legality to recreational use by adults over 21 years of age led to Proposition 19. This initiative was defeated at the polls, but a similar measure passed 57% to 43% in 2016: “The Adult Use of Marijuana Act.” Accordingly, for the last two years,

adults could transport, possess and use marijuana, and possess related paraphernalia. They could also grow plants, but these rights were subject to substantial limits: no more than one ounce of dry cannabis or 8 grams of concentrated active ingredient and no more than six live plants grown in a residence and out of public sight. Other restrictions include no open containers in a vehicle, or use within a moving vehicle (by the driver or passengers). The new law supplemented the medical use prior law allowance without altering the latter's terms.

The new statute, similar to other recent statutes (*e.g.*, in Colorado and other states), raises difficult regulatory issues. These include the problem of use by those under 21 years of age—likely to be in heavy demand—and with prevention difficult. They also include driving dangers beyond the prohibited smoking while driving—and including possible heavy use prior to driving—possibly amplified by alcohol. The complexity is also magnified by the continuing illegality under federal law. Because of that reality, California prohibits the movement of any marijuana in the State into any other state. But studies of production indicate that California is a major producer of the plant nationally, particularly in the so-called Emerald Triangle of Humboldt, Mendocino and Trinity Counties. It is estimated that up to 80% of the crop grown in the state is exported to other states.

Since the volume from individuals growing their own plants is limited, as noted above, agricultural production and sales from commercial enterprises becomes a major aspect of marijuana use. These aspects are subject to regulation, including required licensure by the BCC. That regulation is complicated not only by these listed factors, but also by interaction with other governmental agencies involved in agriculture and commercial enterprises generally. For example, 80% of the state's 482 municipalities have banned stores selling marijuana for recreational

purposes. Related to these complications, those growing/dealing in marijuana sales—partly because of the continuing federal prohibition—are unable to channel proceeds through any bank or other federal regulatory entity. This creates problems of cash as an extreme and necessary means of operation—raising problems ranging from tax collection to theft. In summary, this product involves regulatory issues in its production and growth, sales, and use. Because of this breadth of problem areas, the Bureau of Cannabis Control is not the only state regulatory agency with regulatory jurisdiction (see discussion *infra*).

The Legislature enacted the current Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), Business and Professions Code section 26000 et seq. to set forth the basic functions of the BCC in the marketing of marijuana in its difficult regulatory setting. Under MAUCRSA, BCC is the lead of the three agencies responsible for commercial licensing of medical and adult-use cannabis, including retailers, distributors, testing labs, microbusinesses, and temporary cannabis events. The other licensing agencies are the California Department of Food and Agriculture (CDFA), handled by its CalCannabis Cultivation Licensing division, and the California Department of Public Health’s Manufactured Cannabis Safety Branch (MCSB). BCC is also charged with regulation and enforcement of commercial cannabis businesses.

As a bureau within DCA, BCC is not governed by a multimember board. Most consumer advocates prefer such a multi-member governing structure because it compels decisions at “meetings”—which under the California Open Meetings Act must be held in public. Instead, BCC operates under the oversight of a Bureau Chief appointed by the Governor. This means that decisions can be made in an office where there may be no public input and where lobbyists for special interests may lobby in a concealed fashion. The Bureau Chief operates subject to the direct

authority of the DCA Director. And as is often the case where a multi-member deciding board of commission is lacking, Business and Professions Code section 26014(a) mandates that BCC have an Advisory Committee tasked with advising BCC on the development of standards and regulations for commercial cannabis activity to protect public health and safety, while avoiding unnecessary barriers to licensure that could perpetuate the illicit market for cannabis. Commencing on January 1, 2019, Business and Professions Code section 26014(c) requires the Advisory Committee to publish an annual public report describing its activities including, but not limited to, the recommendations the Advisory Committee made to the licensing authorities during the immediately preceding calendar year and whether they implemented those recommendations.

In addition to licensing, BCC is responsible for setting operational regulations for commercial cannabis businesses and oversight to ensure that licensees and businesses are in compliance with regulations. BCC enforcement actions include the issuance of citations, orders of abatement, and imposition of administrative fines. When a licensee is facing an accusation which may result in the disciplinary action of license revocation pursuant to Business and Professions Code section 26031, a hearing is conducted in accordance with the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code (commencing with section 11500). If the hearing results in a finding that the licensee has committed the act, BCC may suspend or revoke the license.

The Advisory Committee is not required to have a set number of members but section 26014(b) of the Business and Professions Code does mandate that the Committee include members with specific expertise including, but not limited to, representatives of the medicinal cannabis industry, labor representatives, and experts in public health, community equity, and those with other subject matter expertise in regulating commercial activity for adult-use of intoxicating

substances (*e.g.*, from the Department of Alcoholic Beverage Control). All members are appointed by, and serve at the pleasure of, the DCA Director. Currently there are 22 [members](#) on this Advisory Committee.

The Committee has created multiple subcommittees to advise the Bureau on specific types of issues. These include separate subcommittees on Cultivators, Distributors, Enforcement, Equity, Retailers Public Health and Youth, Testing Laboratories, Licensing Application, Manufacturers, and Microbusiness, respectively.

In December of 2017, BCC adopted emergency regulations setting forth the Bureau’s regulatory framework, which were amended and readopted in June 2018 to provide greater clarity to licensees. BCC’s regulations are codified in Division 42, Title 16 of the California Code of Regulations (CCR) and are currently in effect until December 15, 2018 (180 days after the emergency regulations were readopted). BCC, in concert with CDFA and MCSB, is currently undergoing the formal rulemaking process to adopt permanent regulations. [See MAJOR PROJECTS]

MAJOR PROJECTS

Transition Period Ends

As the above description outlines, the new authority for recreational marijuana sales and consumption was only enacted in 2016 and became effective in 2017. Accordingly, the beginning of regulation involved an implementation “transition period” starting with the December 2017 emergency regulations—and intended to last until June 30, 2018 when operations were expected to begin. At that point (July 1, 2018) all licensees were then required to meet all statutory and regulatory requirements in order to sell cannabis goods. BCC published the details of the newly-

imposed regulations in a June 8, 2018 [press release](#) and [Fact Sheet](#). Of note, the following regulatory categories and measures are implicated:

◆ ***Laboratory Testing Requirements***: Pursuant to section 5715, Title 16 of the CCR, cannabis and cannabis products shall not be sold or transferred to a retailer, or released for retail sale, unless a representative sample of the cannabis or cannabis product has undergone and passed all testing as specifically set forth in that section according to a “phase-in” timeline. Beginning July 1, 2018, a licensee may only sell cannabis goods that have been tested by a licensed testing laboratory and have passed all statutory and regulatory testing requirements. Untested goods cannot be sold by a retailer and must be destroyed.

◆ ***THC Limits for Edible Cannabis Products***: Pursuant to subdivision (a) of section 5029, Title 16 of the CCR, licensees, beginning January 1, 2018, are prohibited from transporting or selling any edible cannabis product that exceeds 10 milligrams of tetrahydrocannabinol (THC) per serving. THC is the intoxicating agent within cannabis. To facilitate the transition to the regulated commercial cannabis market, subdivision (b) of section 5029 established a “transition period” between January 1 and July 1, 2018, in which licensees were permitted to sell certain cannabis goods that did not comply with subdivision (a), provided that they comply with specific conditions. For example, during the transition period, cannabis goods that were not in child-resistant packaging could still be sold if they were placed into child-resistant packaging by the retailer at the time of sale.

Other provisions of the transition rules similarly apply to:

- Packaging and Labeling Requirements
- THC Limits for Non-Edible Cannabis Products

- Ingredients and appearance of cannabis products

BCC Initiates Formal Rulemaking Process to Codify its Proposed Regulations

On May 25, 2018, BCC published [notice](#) of its intent to re-adopt its emergency regulations currently in effect, which had been originally adopted in November 2017. According to its [finding of emergency](#), and pursuant to section 26013 of the Business and Professions Code, the Bureau is permitted to adopt regulations via the emergency rulemaking process until they are able to complete the formal rulemaking process pursuant to the Administrative Procedure Act. The Bureau accepted public comments on the proposed re-adoption through May 30, 2018. The Bureau, in consultation with the Office of Administrative Law (OAL), made several changes to the initially-adopted emergency regulations.

On July 13, 2018, BCC published [notice](#) of its intent to amend various provisions of Division 42, commencing with section 5000, Title 16 of the CCR. According to the [Initial Statement of Reasons](#) for the revised version, this comprehensive set of regulations is the Bureau's formal implementation of the legislature's regulatory framework set forth in the MAUCRSA. Specifically, after seeking input from stakeholders, the Bureau claims that these regulations will help applicants and licensees to better understand the applicable meaning of key statutory terms and other terms related to the Bureau's licensing program; clearly identify the documents and information required in an application for licensure; and clarify prohibitions, requirements, and other conditions for compliance with the MAUCRSA.

As a new industry, BCC is establishing regulations to manage and oversee licensing, security, transport, retail, distribution, testing laboratories, delivery, and other areas of the cannabis

industry. BCC’s readopted emergency regulations are currently in effect, and the proposed permanent [regulations](#) differ from the initial emergency version in several ways, as set forth in BCC’s [Summary of Proposed Regulatory Changes](#) and discussed below. Those proposed changes to the previous emergency regulations can be briefly summarized as follows:

- In Chapter one, which covers all Bureau of Cannabis Control Licensees, BCC proposes to amend sections 5000–5055, to clarify various definitions of important cannabis-related terms; and modify procedures for applications, licensing, posting and advertising, security measures, and returns and destruction. BCC also proposes to amend the processes for complying with the California Environmental Quality Act (CEQA).

- In Chapter two, which covers distributors, BCC proposes to amend sections 5300–5315, to specify what may be sold in cannabis shops; how cannabis products must be packaged and labeled; and how to maintain sales invoices.

- In Chapter three, which covers retailers and deliveries, sections 5400–5427, BCC proposes to specify how to safely maintain and operate stores and delivery vehicles, and how to sell products in child-proof packaging. In addition, BCC proposes to add subsection (d) to section 5416, to allow delivery employees to deliver cannabis products “to any jurisdiction within the State of California.” In its [statement of reasons](#), BCC contends that this addition is necessary to “clarify that MAUCRSA and its implementing regulations do not impose restrictions or limit where a delivery employee may deliver, as long as it is within the State of California.”

- In Chapter four, which covers microbusiness, sections 5500–5507, BCC proposes to modify microbusiness regulations and to clarify the process for obtaining microbusiness licenses.

- In Chapter five, which covers cannabis events, BCC proposes to modify sections 5600–5603 to require event applicants to include additional details specifying the location of the cannabis retailer and locations where cannabis will be consumed and sold.

- In Chapter six, which covers testing laboratories, BCC proposes to amend sections 5700–5739, to clarify definitions; require testing laboratories to have standard operating procedures for various testing methods; and to expand and modify procedures for microbial impurities testing, residual pesticide testing, cannabinoid testing, terpenoid testing, heavy metals testing, foreign material testing, Certificate of Analysis (COA), remediation and retesting, Laboratory Quality Control (LQC) samples, data packaging, required proficiency testing, and other cannabis testing procedures. BCC also proposes to amend the procedures for laboratory transportation of cannabis goods samples and the Chain of Custody (COC) procedures “to ensure accurate documentation is recorded for the transport, handling, storage, and destruction of samples.”

- In Chapter seven, which covers enforcement, sections 5800–5815, BCC proposes to modify the process of the issuing of emergency decisions relating to public health, safety, and welfare.

- Finally, the Bureau proposes to add Chapter eight, sections 5900–5904, to set forth eligibility, proposal requests, selection processes, and records to award research funding pursuant to Revenue and Taxation Code section 34019(b) to public universities.

Of particular note are substantive changes in particular areas, as follows:

◆ ***Cannabis Waste.*** BCC amended the regulations for clarification including amending the definition for cannabis waste; specifying the provisions pertaining to the type of license and designation of the license (A and M) as set forth in sections 5001 and 5002.

◆ ***Labor Peace Agreements.*** Title 16 of the CCR; amending sections 5002, 5023, and 5600 to require labor peace agreements to be entered into as soon as reasonably practical after licensure or after the business employs 20 or more employees; and amending section 5014(b) to specify that annual license fees shall be paid after the applicant has been approved for licensure and that the Bureau shall not issue licenses until after that fee has been paid.

◆ ***Premises.*** The adopted version of the emergency regulations provides an exemption to the prohibition on having a drive-in or drive through located at a dispensary. Applicants that received license or permit prior to June 1, 2018, including a drive-in or drive through on the application, or that submitted an application to the local jurisdiction prior to June 1, 2018, including in it information that a drive-in was already part of, or proposed to be part of the premises if the jurisdiction approved. CCR §5025(f).

CCR §5026(e) further illuminates that if the bureau is denied access to one licensee's premises because of another licensee's refusal to grant access when the only access to the first premises is through the second, then both licensee's will be held responsible.

◆ ***Security Measures.*** Under the newly added CCR §5045, security personnel must be at least 21 years of age and licensed by the Bureau of Security and Investigative Services.

◆ ***Transport.*** Under the changes with regard to the transportation of cannabis, CCR §5311(e) clarifies that the inside of the vehicle does include the trunk. Also under this section,

CCR §5311(k), the requirement to keep medicinal and adult use cannabis goods separate in transport vehicles was removed.

◆ **Retail.** CCR §5405 removed the requirement that retailers not display cannabis goods in a place visible outside the licensed premises.

◆ **Delivery.** Several sections of the code were modified pertaining to delivery as follows:

- CCR §5415 clarifies that a delivery employee may not engage in any activities except for cannabis goods, delivery, and necessary rest, fuel, or vehicle repair stops. Also under this section is clarification that a delivery employee shall confirm the age and identity of the customer.

- CCR §5417(a) clarifies that only the licensee or an employee of the licensee shall be in a delivery vehicle. CCR §5417(b) clarifies that cannabis goods shall be locked in a box, container, or cage, that is secured to the inside of the vehicle, and further provides that “inside” the vehicle includes the “trunk.”

- CCR §5418 Allows a delivery employee to carry up to \$10,000 in cannabis goods and complete multiple deliveries, but not leave the retailer premises without at least one delivery order that has been received and processed. Further, changes under §5418 requires the delivery driver to maintain a log that includes all stops from the time the driver left the retail premises to the time the driver returns. In addition, it provides that the driver must have a detailed inventory ledger that includes the type of good, the brand, the retail value, the track and trace identifier, and the weight, the volume, or other measure of the cannabis good. The changes under this section also provide that the driver may only carry cannabis for one retailer at a time.

OAL [approved](#) BCC’s petition to readopt the emergency regulations on June 4, and they became effective on June 6, 2018 for an additional 180 days until the Bureau adopts its final regulations through the formal rulemaking process.

After releasing the proposed text for public comment, BCC held three public hearings throughout the state in August 2018. The final hearing occurred on August 27, the same day as the comment period.

Laboratory Testing Aspect of Regulations

In August, 2018, BCC published a [Laboratory Testing Fact Sheet](#), which explains how to proceed with “cannabis goods batch[es] that fail[] regulatory compliance testing.” As noted above, the rules include potency maximums for the cannabis product and requires testing to assure compliance with those standards. The fact sheet explains COA and unique lot/batch numbers which are individually issued for each tested cannabis batch. “A cannabis goods batch that fails any test performed by a licensed testing laboratory fails regulatory compliance testing and may not be transported to any retailer for sale” and may not simply be re-tested. A COA cannot be amended after it has been issued. Instead, the licensee may destroy the batch, or remediate the batch by submitting a corrective action plan to the California Department of Public Health and re-testing and passing all required regulatory compliance testing.

The fact sheet also describes the requirements for the issuance of COAs in terms of the required potency standards, lack of contaminants, and other safeguards. COAs must contain the results of the laboratory testing of each required analyte and of each test that was conducted, even if the test was not requested by the licensee or required by the Bureau’s regulations. Issued COAs

must then be “sent to BCC.Labs@dca.ca.gov within one business day of completing the analyses of the sample.”

Microbusiness Subcommittee Recommendations

The regulatory system being created included a category called “microbusiness” or a licensed entity involving production or sales with a ceiling on gross receipts and number of employees. The rules describe it in one iteration as follows: “a ‘sub-microbusiness’ or ‘microbusiness A’ license allows up to 10,000 square feet of cultivation including nurseries, three out of four activities to be fulfilled by allowing any type of non-volatile solvent manufacturing including shared space manufacturing, retail sales to happen at events in addition to storefront sale and delivery, and distribution to be fulfilled by full distribution or distribution transport only.”

The Advisory Committee, described *supra*, includes a Microbusiness Subcommittee monitoring these relatively prevalent forms of enterprise. It submitted three [recommendations](#) at the September 20, 2018 Cannabis Advisory Committee Meeting. The Microbusiness Subcommittee recommended BCC “[p]rovide a ‘sub-microbusiness’ or ‘microbusiness A’ license” that is limited to the criteria quoted above.

In addition, the Microbusiness Subcommittee recommended the “Bureau and California Department of Public Health (CDPH) work together to create a document that they could distribute jointly to clarify that local governments may further limit the types of activities that are permitted to occur under a microbusiness authorized to engage in level one manufacturing within their jurisdiction.” Finally, the subcommittee recommended the “Bureau consider removing the prohibition on activities allowed within the home, so long as the activities that the applicant is choosing to conduct are activities commonly allowed under cottage business.”

LEGISLATION

[AB 1817 \(Committee on Budget\)](#), as amended June 11, 2018, amends section 26051.5 of the Business and Professions Code. Section 26051.5 is amended to specify the requirements of “applicant[s] for any type of state license issued pursuant to” MAUCRSA. Requirements for applicants include submitting fingerprint images to the Department of Justice, paying all fees required for licensure by the licensing authority, and allowing “the Bureau of Cannabis Control, the Department of Food and Agriculture, and the State Department of Public Health to obtain and receive, at their discretion, criminal history information from the Department of Justice and the Federal Bureau of Investigation for an applicant for any state license under this MAUCRSA,” among other amendments. Specifically, this bill is amended to require “the Department of Justice to transmit fingerprint images and related information to the Federal Bureau of Investigation for the purpose of obtaining a federal criminal history records check.”

Governor Brown signed AB 1817 on June 27, 2018 (Chapter 37, Statutes of 2018).

[AB 2799 \(Jones-Sawyer\)](#), as amended August 24, 2018, amends section 26051.5 of the Business and Professions Code. Specifically, the bill includes legislative findings and declarations that the bill “furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act because it enacts protections for employees and other workers of licensees that are in addition to the protections provided for in the Control, Regulate and Tax Adult Use of Marijuana Act.” Section 26051.5 is amended to require an applicant for any type of state license issued under MAUCRSA to provide “a statement, upon initial application and application for renewal that the applicant employs or will employ within one year of receiving or renewing a license, one supervisor and one employee who have successfully completed a Cal-OSHA 30-hour general

industry outreach course.” This bill, however, does not change existing occupational safety and health training requirements.

Governor Brown signed AB 2799 on September 30, 2018 (Chapter 971, Statutes of 2018).

[AB 1527 \(Jones-Sawyer\)](#), as amended April 5, 2018, amends section 26040 of the Business and Professions Code to establish that members of the Cannabis Control Appeals Panel with the following member: three members shall be appointed by the Governor, whose appointments are “subject to confirmation by a majority vote of all the members elected to the Senate”; one member appointed by the Senate Committee on Rules; and one member by the Speaker of the Assembly. This bill includes legislative findings and declarations that the act “furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act of 2016.”

Governor Brown signed AB 1527 on July 16, 2018, and took effect immediately as an urgency statute, (Chapter 95, Statutes of 2018).

[SB 1294 \(Bradford\)](#), as amended August 23, 2018, also known as the California Cannabis Equity Act of 2018, adds Chapter 23 (commencing with section 26240) to Division 10 of the Business and Professions Code to establish a framework for funding and assistance for individuals seeking to enter California’s cannabis industry—particularly those who have been most negatively affected by “the long-term consequences of prohibition.” Specifically, the bill includes legislative findings and declarations that the bill is intended to provide resources to local programs to “reduce barriers to entry into the legal, regulated market.” Because “arrests, convictions, and long-term collateral consequences arising from a conviction fell disproportionately on Black and Latinx people, even though people of all races used and sold cannabis at nearly identical rates.” “These

individuals have a more difficult time entering the newly created adult-use cannabis industry” This bill will offer “technical support, regulatory compliance assistance, and assistance with securing the capital necessary to begin a business.... . Offering these supports will also aid the state in its goal of eliminating or reducing the illicit cannabis market by bringing more people into the legal marketplace. It is the intent of the Legislature in enacting this act to ensure that persons most harmed by cannabis criminalization and poverty be offered assistance to enter the multibillion dollar cannabis industry.”

Of note, the bill adds section 26240 to define relevant terms, including “local equity program,” defined as “a program adopted or operated by a local jurisdiction that focuses on inclusion and support of individuals and communities in California’s cannabis industry who are linked to populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization;” and eligible local jurisdiction, defined as “a local jurisdiction that has adopted or operates a local equity program.” Section 26242 is added to allow BCC to, “upon request by a local jurisdiction, provide technical assistance to a local equity program that helps local equity applicants or local equity licensees.” Section 26244 is added to highlight factors that the BCC shall consider in determining whether to grant funding to applicants. Under section 26244, BCC shall review an application based on the proscribed factors and shall grant funding to an eligible local jurisdiction based on its review of the factors. Section 26246 requires the Bureau to publish on its website, by July 1, 2019, approved local equity ordinances and model local equity ordinances created by advocacy groups and experts, and section 26248 requires BCC to submit a report to the legislature on or before July 1, 2020, detailing the progress of funded local equity programs.

Governor Brown signed SB 1294 on September 26, 2018 (Chapter 794, Statutes of 2018).

[AB 2899 \(Rubio\)](#), as amended June 20, 2018, amends section 26152 of the Business and Professions Code. Section 26152 is amended to prohibit licensees from advertising, marketing, and publishing certain material and in certain ways. Specifically, this act prohibits licensees from “advertis[ing] or market[ing] in a manner that is false or untrue ... [or that] tends to create a misleading impression.” This act also prohibits licensees from “publish[ing] or disseminat[ing] advertising or marketing that is attractive to children.” Similarly, this act prohibits licensees from “advertis[ing] or market[ing] cannabis or cannabis products on an advertising sign within 1,000 feet of a day care center, school providing instruction in kindergarten or any grades 1 to 12, inclusive, playground, or youth center.” Additionally, licensees are prohibited from “[p]ublish[ing] or disseminat[ing] advertising or marketing while the licensee’s license is suspended” amongst other provisions.

Governor Brown signed AB 2899 on September 29, 2018 (Chapter 923, Statutes of 2018).

[SB 1451 \(Fuller\)](#), as amended July 2, 2018, would have added section 26031.1 to the Business and Professions Code would have imposed specific penalties on a licensee who is found pursuant to section 26031 to sell, furnish, or cause to be sold or furnished “cannabis or cannabis products to any person under the legal age,” or “who permits a person under the legal age to consume cannabis or cannabis products on the licensed retail premises.” A-type or M-type retailer licensees or A-type or M-type microbusiness licensees would have been subject to discipline under this act, including “a 15-day suspension of its ... license issued for that retail premises where the violation occurred. A second violation ... shall subject the licensee to a 25-day suspension ... [and a] third violation ... shall subject the licensee to revocation of those licenses.” This section would

not have prohibited the Bureau from revoking a license prior to a third violation if the Bureau determined circumstances warranted the revocation. Additionally, section 26031.1 would not have precluded any additional disciplinary actions to be taken by a licensing authority against the licensee when warranted.

On September 10, Governor Brown [vetoed](#) SB 1451, stating that “this bill restricts the Bureau of Cannabis Control’s (Bureau) regulatory discretion and limits its ability to carryout enforcement actions based on the pertinent facts of a violation. This bill is not necessary. The Bureau already has the authority to revoke, suspend, and assess fines if a licensee sells to a minor.”

[SB 829 \(Wiener\)](#), as amended August 24, 2018, would have amended sections 26001 and 26153, and added section 26071, to the Business and Professions Code; and would have amended sections 34010, 34011, and 34012, and added sections 34012.1 and 6414 of the Revenue and Taxation Code. Specifically, the bill includes legislative findings and declarations that the bill was intended to “regulate the distribution of donated medicinal cannabis and cannabis products by retailers and compassionate care programs” because it is essential to protect the health and safety of vulnerable and low-income medicinal cannabis patients by keeping them off the black market “by allowing these compassionate care donations.”

Section 26071 would have been added to allow certain licensees who met the specified criteria to “provide free cannabis or cannabis products” to “medicinal cannabis patients who have difficulty accessing cannabis or cannabis products.” Specific criteria would have required “[f]ree cannabis or cannabis products [to be] provided only to a medicinal cannabis patient,” and “the cannabis or cannabis products [to] comply with all applicable requirements for cultivation, manufacture, distribution, processing ... or donation.” Section 26153 would have been amended

to prohibit a licensee from “giv[ing] away any amount of cannabis or cannabis products, or any cannabis accessories, as part of a business promotion or other commercial activity.” Section 6414 would have been added to exempt “the storage, use, or other consumption” from the use tax if the “medicinal cannabis or medicinal cannabis product [was] donated by a [licensed] cannabis retailer ... to a medicinal cannabis patient,” or “donated by a [licensed] person ... to a cannabis retailer for subsequent donation to a medicinal cannabis patient, or to any other licensee for ultimate donation by a cannabis retailer to a medicinal cannabis patient.”

Section 34011 of the Revenue and Taxation Code would have been amended to impose an excise tax “upon purchases of cannabis or cannabis products ... at the rate of 15 percent of the average market price of any retail sale by a cannabis retailer.” Section 34012 of the Revenue and Taxation Code would have been amended to impose a “cultivation tax on all harvested cannabis” that would have entered “the commercial market upon all cultivators.” Section 34012.1 would have been added to the Revenue and Taxation Code to specify that “the cultivation tax shall not be imposed on medicinal cannabis designated for donation.”

On September 30, Governor Brown [vetoed](#) SB 829, stating that “[t]his bill contains provisions that conflict with the strict standards contained in the voter approved Control, Regulate, and Tax Adult Use of Marijuana Act. Providing free cannabis to a person with only a doctor’s recommendation undermines these rules and the intent of the voters.”

[AB 2980 \(Gipson\)](#), as amended August 28, 2018, would have amended sections 26001 and 26051.5 of the Business and Professions Code. Section 26001 would have been amended to define “premises” as “the contiguous area wherein the license privileges are, or will be, exercised, as diagramed in the application for licensure and for which a separate license is required. Nothing

in this subdivision shall be construed to prohibit two or more licensed premises from sharing common use areas, such as a bathroom, breakroom, locker room, hallway, or loading dock, wherein no license privileges will be exercised so long as all licensees comply with the requirements of this division.” Section 26051.5 would have been amended to require an applicant to submit “a detailed description of the applicant’s operating procedures for all of the following, as required by the licensing authority: (1) Cultivation. (2) Extraction and infusion methods. (3) The transportation process. (4) Inventory procedures. (5) Quality control procedures. (6) Security protocols.” Section 26051.5 would have also been amended to require applicants to “provide a complete detailed diagram of the proposed premises wherein the license privileges will be exercised, ... [and] [p]rovide a complete list of every person with a financial interest in the person applying for the license.”

On September 29, Governor Brown [vetoed](#) AB 2980, stating that “[t]his bill changes the definition of premises ... [however] [i]nstead of changing the definitions in statute, it would be more appropriate for the licensing entities to address this in their regulations.”

[AB 1996 \(Lackey\)](#), as amended August 14, 2018, would have amended sections 2525.1 and 26190.5 of the Business and Professions Code; amended section 11362.9 of the Health and Safety Code; and amended section 2429.7 of the Vehicle Code. Section 2525.1 would have been amended to require the Medical Board of California to consult with the California Cannabis Research Program to develop and adopt medical guidelines for the “appropriate administration and use of medicinal cannabis.” Section 26190.5 would have been amended to require BCC to contract with the “California Cannabis Research Program ... to develop a study that identifie[d] the impact that cannabis has on motor skills.” Section 11362.9 would have been amended to

explain the details and purposes of the scientific research studies to be conducted, and to clarify that “[m]oney appropriated to the program pursuant to subdivision (e) of Section 34019 of the Revenue and Taxation Code shall not be used for any of the purposes added by the act that added this subdivision.” Section 2429.7 would have been amended to establish “an impaired driving task force” to be appointed by the commissioner, which would have developed “recommendations for best practices ... and other policies ... [to] address the issue of impaired driving,” and which would have examined “the use of technology ... to identify drivers under the influence of” cannabis and other drugs.

On September 20, Governor Brown [vetoed](#) AB 1996, stating that “[t]his bill renames the California Marijuana Research Program as the California Cannabis Research Program and expands the areas of research that can be undertaken. The bill also prohibits the money appropriated to the Cannabis Research Program from the Cannabis Tax Fund to pay for the provisions of this bill. This bill contains provisions that directly conflict with the Control, Regulate, and Tax Adult Use of Marijuana Act, which the voters approved in November 2016.”

[SB 1459 \(Cannella\)](#), as amended August 27, 2018, is an urgency measure that adds and repeals section 26050.2 of the Business and Professions code to authorize BCC to approve at its discretion provisional licenses, for a 12 month, non-renewable period, if specified conditions are met. Specifically, the bill creates a provisional cultivation license to address the backlog of pending license applications at both the local and state level. The bill includes a sunset date of January 1, 2020.

Governor Brown signed SB 1459 on September 27, 2018, effective immediately (Chapter 857, Statutes of 2018).

[AB 3261 \(Low\)](#), as amended August 24, 2018, amends sections 27, 101, 2525, 26051.5, 26067, 26068, 26070, 26161, and 26211 of the Business and Profession Code, to define “microbusiness” in the context of the MAUCRSA, and to make other clarifying and non-substantive technical changes to the Act.

Governor Brown signed AB 3261 on September 20, 2018 (Chapter 599, Statutes of 2018).

[AB 2914 \(Cooley\)](#), as amended August 21, 2018 adds sections 25621.5 and 26070.2 to the Business and Professions Code. Generally, this section disallows licensees from selling alcohol and cannabis products at the same time. The purpose of this bill is to address the dangers of using cannabis and alcohol at the same time. According to the author, due to the limited amount of research available on the interactions between cannabis, and alcohol due to federal restrictions, the federal centers for Disease Control and Prevention cautions against mixing the two stating,

Using alcohol and marijuana at the same time is likely to result in greater impairment than when using either one alone. Using marijuana and tobacco at the same time may also lead to increased exposure to harmful chemicals, causing greater risks to the lungs, and the cardiovascular system.

Because of the presence of businesses and cannabis goods manufacturers who do sell alcohol/cannabis infused products, the author felt the code should address this proactively.

Governor Brown signed AB 2914 on September 27, 2018 (Chapter 827, Statutes of 2018).

[AB 2721 \(Quirk\)](#), as amended March 23, 2018, amends section 26104 of the Business Professions Code. This bill would authorize a testing laboratory to receive and test samples of cannabis or cannabis products from a person over 21 years of age when the cannabis has been grown by that person and will be used solely for his or her personal use pursuant to AUMA. According to the author,

AB 2721 remedies ambiguity in current law by explicitly allowing cannabis testing laboratories to accept cannabis or cannabis products from people 21 and over who grow cannabis for their own personal, recreational use....Through making this minor regulatory change, more cannabis consumers in the state will have the opportunity to access valuable information about what they consume and protect them from ingesting potentially hazardous materials.

Governor Brown signed AB 2721 on September 19, 2018 (Chapter 546, Statutes of 2018).

[SB 311 \(Pan\)](#), as amended July 3, 2018, amends section 26110 of the Business and Professions Code. Authorizes a licensed distributor to transport cannabis or cannabis products to the premises of another licensed distributor for further distribution. According to its author and the bill analyses, this bill addresses efficiency of the market place. Without this bill, according to the author, the transfer and sale of product will be significantly stalled and the redundant testing costs for multiple tests on the same batch will provide further hardship for licensees.

Governor Brown signed SB 311 on September 19, 2018 (Chapter 556, Statutes of 2018).

[AB 2402 \(Low\)](#), as amended August 23, 2018, amends section 26162.5 and adds section 26161.5 to the Business and Professions Code and amends section 56.06 of the Civil Code, relating to Cannabis. AB 2402 prohibits a licensee from disclosing a consumer's personal information to a third party except to the extent necessary to allow responsibility for payment to be determined.

Governor Brown signed AB 2402 on September 20, 2018 (Chapter 583, Statutes of 2018).

[AB 2020 \(Quirk\)](#), as amended August 20, 2018, amends section 26200 of the Business and Professions Code as it relates to cannabis. AB 2020 authorizes the issuance of a state temporary event license. According to its author, this bill furthers the purposes of the MAUCRSA by granting the BCC the authority to give temporary licenses for cannabis events in jurisdictions that allow for it.

Governor Brown signed AB 202 on September 26, 2018 (Chapter 749, Statutes of 2018).

[AB 2717 \(Lackey\)](#), as amended June 13, 2018, amends sections 23577, 23578, and 23612 of the Vehicle Code. AB 2717 is intended to bring the state laws into compliance with the U.S. Supreme Court decision in *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016). *Birchfield* held that the probable cause necessary for a blood test for drunk driving was more stringent than for a breath tests. This bill would eliminate the criminal penalty for refusing to submit to a blood test. According to its author, under previous iterations of the code, the penalty for refusing to take a blood test when suspected of DUI was the same penalty given for DUI itself. Under the amendment, the legislature attempts to make clear that the penalties for refusal to submit to a DUI test do not apply to a person who refused to take a blood test. The application of this decision as applied to the use of marijuana causing driving disability adds to its difficulty given the lack of a cannabis breathalyzer system.

Governor Brown signed AB 2717 on August 20, 2018 (Chapter 177, Statutes of 2018).

[AB 2255 \(Lackey\)](#), as amended August 20, 2018, would have amended 26070 and 26090 of, and added section 26039 to the Business and Professions Code. AB 2255 would have authorized law enforcement agencies to issue citations for administrative violations of the MAUCRSA.

Governor Brown [vetoed](#) the bill on September 30, 2018, stating that the bill is premature. The Governor stated, it is BCC’s job to “develop appropriate regulations—which they are currently doing—in partnership with California Highway Patrol and other law enforcement agencies.”

RECENT MEETINGS

At its July 19, 2018 [meeting](#), the Advisory Committee heard an informational presentation

entitled “Cannabis Enforcement from the Local Perspective” from Joe Devlin, Chief of Cannabis Policy and Enforcement, City of Sacramento, and Jonathan Feldman, Legislative Advocate, California Police Chiefs Association, as well as a presentation on California’s Cannabis Taxes by Nicolas Maduros, Director, California Department of Tax and Fee Administration. Public comments included concerns over the proposed regulations as to efficacy in preventing youth under 21 years of age from being subjected to advertising or intake promotion. A small cannabis grower complained about lack of options for small farmer “cooperative development” since coops are commonly a part of small farmer operations. The Cannabis Association, representing 475 members, congratulated the Committee for the progress made. A speaker representing Native American tribes noted the need for agreements for their participation—now a difficulty. A lab operator complained about the prohibition of field offices for laboratories. Suggesting field offices can better connect labs with consumers where relevant.