IMPLEMENTING THE MEDICAL MARIJUANA REGULATION AND SAFETY ACT (AB 243, AB 266, AND SB 643)

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Stephen A. McEwen
Burke, Williams & Sorensen, LLP
1851 East First Street, Suite 1550
Santa Ana, CA 92705
800.333.4297 | www.bwslaw.com
smcewen@bwslaw.com

Tim Cromartie
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814
916.658.8200 | www.cacities.org
tcromartie@cacities.org
AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) – Establishes dual licensing structure requiring state license and a local license or permit. Department of Consumer Affairs heads overall regulatory structure establishing minimum health and safety and testing standards.

AB 243 (Wood) – Establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture.

SB 643 (McGuire) - Establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.
OBJECTIVES

- Provide an overview of Federal and State marijuana laws
- Summarize the new State legislation
- Discuss special issues
- Look into the future: the Parker Initiative, the “Control, Regulate and Tax Adult Use of Marijuana Act”
Comprehensive Drug Abuse Prevention and Control Act of 1970

- Comprehensive regime to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances
- Title II of the Act is the CSA (21 U.S.C. § 801 et seq.)
- It is unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA
- Marijuana - schedule I controlled substance
Health and Safety Code Division 10, Uniform Controlled Substances Act (§ 11000 et seq.)

Chapter 6 – Offenses and Punishments

Article 2 – Marijuana

Provides prohibitions and punishments for marijuana possession, cultivation, transportation, and distribution
COMPASSIONATE USE ACT

- Proposition 215, November 1996
- Amended Article 2 (Marijuana) by adding § 11362.5
- Broad Objectives/Limited Exceptions
  - Doctors cannot be punished for recommending marijuana to a patient for medical purposes
  - Immunizes patients and primary caregivers from prosecution for marijuana possession (§ 11357) and cultivation (§ 11358) upon a doctor’s recommendation
MEDICAL MARIJUANA PROGRAM

- SB 420, Added Article 2.5 to H&S Code Chapter 6 (Offenses and Punishments)
- Broad Objectives/Limited Steps
- Created a voluntary identification card program to be administered by the counties
- Expanded immunities for patients/caregivers, including the immunity from state criminal sanctions for collective and cooperative cultivation (§ 11362.775)
AB 243, AB 266, AND SB 643

- A package of bills intended to change the way medical marijuana is cultivated, processed, and distributed to patients and caregivers
- Passed by the Legislature on September 11th, signed by Governor Brown on October 9th
- Taken together, the bills create a broad state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, the manufacturing of marijuana products, and physician recommendations for medical marijuana, and provide immunity to marijuana businesses operating with both a state license and a local permit
AB 243, AB 266, AND SB 643

- Medical Marijuana Regulation and Safety Act (Business and Professions Code §§ 19300 et seq.)
- Amend the MMP by adding Health and Safety Code § 11362.777 regarding cultivation and deleting § 11362.775(a) regarding criminal immunity for collective and cooperative cultivation
Three state agencies will have licensing authority for “commercial cannabis activities”
- Department of Consumer Affairs (Bureau of Medical Marijuana Regulation)
- Department of Food and Agriculture
- State Department of Public Health
- Each will develop implementing regulations
MEDICAL MARIJUANA REGULATION AND SAFETY ACT – LICENSING

- B&P Code § 19320(a) – “[N]o person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization.”

- Commercial cannabis activities: cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product
MEDICAL MARIJUANA REGULATION AND SAFETY ACT – LICENSING

- Department of Food and Agriculture – Cultivation
- Department of Public Health – Manufacturing, Laboratory Testing
- Department of Consumer Affairs – Dispensaries, Distributors, Transporters
MEDICAL MARIJUANA REGULATION AND SAFETY ACT – LICENSING

- Separate state license required for each business location
- State licenses are valid for one year
- Dual licensing requirement: a state licensee cannot commence activity under a state license until the “applicant” has obtained a license or permit from the local jurisdiction
- Local permit revocation terminates authority to operate under state license (city must notify state licensing authority)
- State permit revocation terminates ability to operate in California
- Civil penalties for unlicensed marijuana activities; applicable criminal penalties under existing law will continue to apply
MEDICAL MARIJUANA REGULATION AND SAFETY ACT – LICENSING – CROSS-LICENSING – LIMITATIONS

- Small Cultivators (Types 1, 1A, 1B, 2, 2A, 2B) and Manufacturers (Types 6, 7)
- Manufacturers (Types 6, 7) and Type 10A Dispensary (less than three retail sites)
- Small Cultivators (Types 1, 1A, 1B, 2, 2A, 2B) and Type 10A Dispensary (less than three retail sites)
- A Distributor (Type 11) shall apply for a Transporter license (Type 12), but no other license
- A Transporter (Type 12) may apply for a Distributor license (Type 11)
- A Type 10A Dispensary (less than three retail sites) may apply for a Manufacturer license (Type 6, 7) AND hold any Cultivator license or combination of Cultivator licenses if the cultivation area is no more than four acres in total canopy size statewide
MEDICAL MARIJUANA REGULATION AND SAFETY ACT – LICENSING

- Cultivation licenses – two limits on state applications
  + § 11362.777(b)(2) – cannot apply for state cultivation license unless the applicant “has received a license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from” the local jurisdiction
  + § 11362.777(b)(3) – cannot apply for state cultivation license if the proposed cultivation will violate any local ordinance or regulation, or if medical marijuana is prohibited by the local jurisdiction, either expressly or through permissive zoning
Qualified Patients

- B&P Code § 19319(a) – no state license required for patient who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use and does not distribute to anyone else.

- H&S Code § 11362.777(g) – no state cultivation license required if cultivation area is 100 square feet or less, cultivation is for personal medical use, and patient does not distribute to anyone else.
Primary Caregivers

- B&P Code § 19319(b) – no state license required for caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis for no more than five qualified patients and who does not receive payment except for reimbursement of actual costs.

- H&S Code § 11362.777(g) – no state cultivation license required if cultivation area is 500 square feet or less, cultivation is for no more than five qualified patients, and caregiver does not receive payment except for reimbursement of actual costs.
No preemption of local police power

- B&P Code § 19315(a): “Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.”

- B&P Code § 19316(a): under police power, cities can establish “additional standards, requirements, and regulations.”

- B&P Code § 19316(c): MMRSA does not “limit the authority or remedies of a city . . . under any provision of law, including, but not limited to Section 7 of Article XI of the California Constitution.”
Dual licensing: MMRSA and the amended MMPA require that all marijuana businesses have both a state license, and a local license or permit, to operate legally in California.

Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban.
LOCAL REGULATORY OPTIONS

- Ban Commercial Cannabis Activities Completely or Partially
  - City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729
  - Maral v. City of Live Oak (2013) 221 Cal.App.4th 975
  - Safe Life Caregivers v. City of Los Angeles, 2016 WL 146695

- Regulate Commercial Cannabis Activities
  - Federal preemption?

- What happens in cities that are silent on medical marijuana?
  - State license requires a local “license, permit, or other authorization” (B&P Code § 19320(a))
  - State cultivation license requires a local “license, permit, or other entitlement, specifically permitting cultivation”
ENFORCEMENT

- Preserves local police power and zoning authority
- Dual enforcement scheme
  + Cities will enforce local ordinances and regulations
    - Civil actions, injunctions, administrative enforcement, permit/license revocations, criminal prosecutions
    - See *Kirby v. County of Fresno* for possible limits on criminal prosecution of cultivation violations
    - A city may enforce state law in addition to local ordinances if the state grants such authority upon the city’s request
  + State licensing authorities will enforce state statutes and regulations
    - License suspension/revocation, civil penalties (2X license fee per violation), criminal prosecution
SB 643:
- Establishes a track and trace program for all marijuana
- Directs California Medical Board to prioritize investigation of excessive recommendations by physicians
- Imposes fines ($5000.00) vs. physicians for violating prohibition against having a financial interest in a marijuana business
- Recommendation for cannabis without a prior examination constitutes unprofessional conduct;
- Imposes restrictions on advertising for physician recommendations
SB 643: Disqualifying felony convictions for licensure

- These include felony narcotics convictions, violent felony convictions, serious felony convictions, and felony convictions involving fraud, deceit or embezzlement.

- Applications cannot be denied if the denial is based solely on the applicant’s conviction of a crime for which the applicant was subsequently granted a certificate of rehabilitation, or if the applicant’s conviction was subsequently dismissed.
PUBLIC SAFETY

**AB 266:**

- Limits vertical integration by requiring third party distribution, transportation and testing.
- Requires the development of a study that identifies the impact and impairing effect that marijuana has on motor skills.
- Establishes uniform security requirements at dispensaries as well as for transporters.
AB 266

- Requires establishment of uniform state minimum health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product. Product testing is mandatory.
- Specifies a standard for certification of testing labs, and specified minimum testing requirements. Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business.
AB 243

- Mandates the Dept. of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- Mandates the Dept. of Public Health to develop standards for production and labelling of all edible medical cannabis products.
- Assigns joint responsibility to DFA, Dept. of Fish and Wildlife, and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.
AB 266 includes a labor peace agreement under which unions agree not to engage in strikes, work stoppages, etc. and employers agree to provide unions reasonable access to employees for the purpose of organizing them. Specifies that such an agreement does not mandate a particular method of election.
SPECIAL ISSUES - CULTIVATION

- Maral, Kirby: local jurisdictions may prohibit cultivation completely
- AB 21
  - Deletes the March 1st Deadline
  - Deletes the following sentence from § 11362.777(g): “Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person, or impair the enforcement of that regulation or ban.”
  - Adds the following sentence to § 11362.777(g): “Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from exercising its police authority under Section 7 of Article XI of the California Constitution.”
“‘Delivery’ means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount to be determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory.”

“‘Delivery’ also means the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.”
B&P Code § 19340(a) - Deliveries “can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance.”

If your city wishes to prohibit medical marijuana deliveries, it must have an express prohibition.

Timing – no specific deadline. State anticipates that it will begin issuing dispensary licenses starting January 1, 2018.
What happens if a marijuana business obtains a business license from your city, either in error or as a result of misleading information from an applicant, and the State issues a license?

- Should not be a problem if your code has clear provisions regarding marijuana-related land uses. Check your local ordinances and make sure there are no loopholes.
- Local license revocation terminates the ability to operate under a state license (B&P Code § 19320(b))
52334. Notwithstanding any other law, on and after January 1, 2015, a city, county, or district, including a charter city or county, shall not adopt or enforce an ordinance that regulates plants, crops, or seeds without the consent of the secretary. An ordinance enacted before January 1, 2015, shall be considered part of the comprehensive program of the department and shall be enforceable.
A later enacted, and more specific, statute prevails over an earlier enacted, more general one. (Woods v. Young (1991) 53 Cal.3d 315, 324.)

No need for a city to obtain permission to adopt a cultivation ordinance – state law already specifically authorizes cities to adopt such ordinances. (H&S §§ 11362.777 (b)(3), (c)(1).)

Advocates’ interpretation would lead to absurd results and would be inconsistent with AB 243.
CITY OBLIGATIONS

- City Obligations
  - Local authorities shall notify the bureau upon revocation of a local license (B&P Code § 19320(b))
  - “A city, county, or city and county that issues or denies conditional licenses to cultivate medical marijuana pursuant to this section shall notify the department [FDA] in a manner prescribed by the secretary.” (H&S Code § 11362.777(c)(2).)
“A local jurisdiction shall not prevent transportation of medical cannabis or medical cannabis products on public roads by a licensee transporting medical cannabis or medical cannabis products in compliance with this chapter.”  (B&P Code § 19338(b).)

“A local jurisdiction shall not prevent carriage of medical cannabis or medical cannabis products on public roads by a licensee acting in compliance with this chapter.”  (B&P Code § 19340(f).)
MEDICAL MARIJUANA REGULATION AND SAFETY ACT - KEY DATES

- **July 1, 2015** – A vertically-integrated medical marijuana business is permissible if (1) the business was cultivating, manufacturing, and dispensing as July 1, 2015 and has continued to do so since; (2) has been in full compliance with local ordinances at all times prior to licensure; and (3) is registered with the State Board of Equalization. (B&P Code § 19328(c).)

- **January 1, 2016** – Any facility operating in good standing with a local jurisdiction by January 1, 2016 shall get priority in the review of a license application. (B&P Code § 19321(c).)

- **January 1, 2018** – Any facility operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018 can keep operating until its license application is approved or denied. (B&P Code § 19321(c).)
THE PARKER INITIATIVE – CONTROL, REGULATE AND TAX ADULT USE OF MARIJUANA ACT

- Would allow recreational marijuana in California
- Would allow individuals to possess up to one ounce or grow up to six plants
- Similar license categories as under MMRSA, but no dual licensing requirement
- Preserves local control, but prevents cities from banning personal indoor grows of up to six plants (possible loopholes)
QUESTIONS?