Informational Briefing:
Medical Marijuana Regulation and Safety Act

- This briefing is designed to educate our members on the three bills comprising the Medical Marijuana Regulation and Safety Act (MMRSA). Its goals are to:
  - Explain how this legislation protects local control;
  - Review the details of what each bill does;
  - Highlight specific regulatory issues that require immediate attention from local governments;
  - Discuss timelines for implementation
  - Field your questions

Note: Some of the provisions of the new laws discussed in this briefing are not included in the Medical Marijuana Regulation and Safety Act.

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Medical Marijuana Regulation and Safety Act

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Medical Marijuana Regulation and Safety Act

- The Medical Marijuana Regulation and Safety Act consists of three discrete pieces of legislation:
- **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.

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- This legislation protects local control in the following ways:
- **Dual licensing:** A requirement in statute that all marijuana businesses must 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.
- **Effect of Local Revocation of a Permit or License:** Revocation of a local license or permit terminates the ability of a marijuana business to operate in that jurisdiction under its state license.
- **Enforcement:** Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency.
- **State law penalties for unauthorized activity:** Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law will continue to apply.
- With certain exceptions, expressly protects local licensing practices, zoning ordinances, and local actions taken under the constitutional police power.

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- This legislation protects public safety in the following ways:

- **SB 643**: Establishes a track and trace program for all marijuana.

- **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.

Key State Medical Marijuana Laws

- Compassionate Use Act of 1996 (Health and Safety Code section 11362.5). Criminal violations relating to possession and cultivation of marijuana do not apply to patients and primary caregivers for possession and cultivation of marijuana for personal medical use with doctor's approval.

- Medical Marijuana Program (Health and Safety Code section 11362.7 through 11362.9). Establishes voluntary program for identification cards issued by county for qualified patients and primary caregivers and provides criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana.

- Medical Marijuana Regulation and Safety Act (Business and Profession Code section 19300 through 19360). Governs the licensing and control of all medical marijuana businesses in the state and provides criminal immunity for licensees.

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Two areas will require immediate attention from local governments:

- **Deliveries and mobile dispensaries:** Delivery is permitted with a State license unless a city adopts an express prohibition on delivery (AB 266).

- **Cultivation ordinances:** Cities must adopt an ordinance prohibiting or regulating cultivation prior to March 1, 2016. Otherwise the State will be sole licensing authority.

Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**

- Establishes a statewide regulatory scheme administered by the Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA).
- Provides for dual licensing: both a state license, and a local permit or license, ***issued according to local ordinances,*** are required.
- Caps total cultivation for a single licensee at 4 acres statewide, subject to local ordinances.
- Creates four licensing categories: Dispensary, Distributor, Transport, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Specifies various sub-categories of licensees (indoor cultivation, outdoor cultivation, etc.)
- Limits cross-licensing: Operators may hold one state license in up to two separate license categories. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.

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- **AB 266 Medical Marijuana – what the bill does:**

- Grandfathers in vertically integrated businesses (i.e. businesses that operate and control their own cultivation, manufacturing, and dispensing operations) if a local ordinance allowed or required such a business model and it was enacted on or before July 1, 2015. Requires businesses to operate in compliance with local ordinances, and to have been engaged in all the specified activities on July 1, 2015.
- 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.

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- **AB 266 Medical Marijuana – what the bill does:**

- Labor Peace: 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.

- Specifies that patients and primary caregivers are exempt from the state licensing requirement, and provides that their information is not to be disclosed and is confidential under the California Public Records Act.

- Phases out the existing model of marijuana cooperatives and collectives one year after DCA announces that state licensing has begun. Thereafter license will be required.

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- **AB 243 Medical Marijuana – what the bill does:**
- Places the Dept. of Food and Agriculture (DFA) in charge of State licensing and regulation of indoor and outdoor cultivation sites.
- 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.

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- **AB 243 Medical Marijuana – what the bill does:**

- Specifies that DPR, in consultation with SWRCB, is to develop regulations for application of pesticides in all cultivation.

- Specifies various types of cultivation licenses.

- Directs the multi-agency task force headed by the Dept. of Fish and Wildlife and the SWRCB to expand its existing enforcement efforts to a statewide level to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats.

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- **SB 643 Medical Marijuana – what the bill does:**

- 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;

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- **SB 643 Medical Marijuana – what the bill does:**

- Places Dept. of Food and Agriculture in charge of cultivation regulations and licensing, and requires a track and trace program;
- Codifies dual licensing (state license and local license or permit), and itemizes disqualifying felonies for state licensure;
- Places DPR in charge of pesticide regulation; DPH in charge of production and labelling of edibles;
- Authorizes counties to tax – declaratory of existing law.

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- **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.

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- **Delivery of Medical Marijuana (AB 266)**
- "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health & Safety Code, or a testing laboratory.
- "Delivery" also includes the use by a dispensary or 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. (Business & Professions Code 19300.5(m))

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- **Delivery of Medical Marijuana (AB 266)**
- *"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*. Business & Professions Code 19340(a). See also Section 19340(b)(1).
- Therefore, if your city wishes to prohibit delivery of medical marijuana within your city, an ordinance must be adopted to <u>explicitly prohibit</u> deliveries.
- Timing: State licenses are expected to be issued starting January 1, 2018. A facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements may continue its operations until its application for licensure is approved or denied effective January 1, 2018 (Business & Professions 19321(c)).
- Ordinance explicitly prohibiting deliveries should include (1) an amendment to the zoning code prohibiting "delivery" (as defined in AB 266) in any zoning district; or (2) an amendment to the Municipal Code relating to business operations prohibiting "delivery" of 'medical marijuana" and "medical cannabis products" (as defined in AB 266) as a business within the city.

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- **Cultivation (AB 243)**
  - AB 243 (Wood) prohibits cultivation of medical marijuana without first obtaining both a local license/permit/other entitlement for use and a state license. A person may not apply for a state license without first receiving a local license/permit/other entitlement for use.
  - A person may not submit an application for a state license if proposed cultivation will violate provisions of local ordinance or regulation or if medical marijuana is prohibited by city, county, or city and county either expressly or otherwise under principles of permissive zoning (Health & Safety 11372.777(b)).

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- **Cultivation (AB 243)**
- **However**…If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles or permissive zoning*, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the state is the sole licensing authority for medical marijuana cultivation applicants (Health & Safety 11372.777(c)(4)). [March 1, 2016 deadline does not apply to cultivation for personal medical use within 100 square foot area/500 square foot area for primary care-taker].

- Under a "permissive" zoning code, "any use not enumerated in the code is presumptively prohibited." *City of Corona v. Naulis* (2008) 166 Cal.App.4th 418, 425 cited in *County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, FN. 3

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- **Cultivation (AB 243) – Examples:**
- City #1: Municipal Code that expressly prohibits cultivation of marijuana: No need to take any action.
- City #2: Municipal Code that expressly regulates (requires a permit or license or other entitlement) the cultivation of medical marijuana: No need to take any action.
- City #3: Municipal Code that does not expressly prohibit or expressly regulate (requires a permit or license or other entitlement) to cultivate medical marijuana and is not a "permissive zoning" code. ***Need to take action (see next slide)***
- City #4: Municipal Code that is a "permissive zoning" code and does not enumerate cultivation of medical marijuana as a permitted or conditional use: ***Need to take action (see second slide following).***

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- **Cultivation (AB 243) – Examples:**

- **City #3 : What needs to be done before March 1, 2016?**

- City #3: Enact an ordinance. The Department of Food and Agriculture will be the sole licensing authority for the cultivation of medical marijuana within City #3 *if City #3 does not have an ordinance either expressly prohibiting or expressly regulating the cultivation of medical marijuana before March 1, 2016*. (Health & Safety Code 11362.777(c)(4). Second reading of an ordinance must occur by January 29, 2016 or a city may consider adopting an urgency ordinance pursuant to Government Code 36937).

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- **Cultivation (AB 243) – Examples:**
- **City #4 : What needs to be done before March 1, 2016?**
- City #4: If City #4 prohibits the cultivation of medical marijuana "under principles of permissive zoning," then the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within City #4. (Health & Safety Code 11362.777(b)(3)). ***However, the city still needs take action (see next slide).***

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- **Cultivation - General Guidelines for Cities**
- Check and confirm that your city's zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #3.

- If confirmed that your city's zoning code is adopted and implemented under the principles of permissive zoning: Adopt a resolution that includes the following provisions:
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  - (1) States that H & S 11362.777(b)(3) states that Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
  - (2) Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
  - (3) States this means that cultivation of marijuana is not allowed within City #4 because it is not expressly permitted and,
  - (4) Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #4.

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- Timeline for Implementation
  - None of the bills specify a timeline for implementation
  - This is partly due to various departments being at different stages in terms of their readiness
  - The rough timeline we have been given for state licensing to begin is January 2018
  - The more immediate timeline for locals to bear in mind is March 2016 regarding your cultivation ordinances

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- Questions?