

Oversight Hearing of the
Senate Committee on Business, Professions, and Economic Development

The State of Cannabis Regulation in California: Progress, Challenges, and Next Steps

Monday, March 13, 2023
10:30 am
1021 O Street, Room 2100

BACKGROUND

Brief History of Cannabis in California

In 1996, California first legalized medicinal cannabis via Proposition 215, also known as the Compassionate Use Act. Proposition 215 protected qualified patients and primary caregivers from prosecution related to the possession and cultivation of cannabis for medicinal purposes. In 2003, the Legislature authorized the formation of medical marijuana cooperatives—nonprofit organizations that cultivate and distribute marijuana for medical uses to their members through dispensaries.

In 2015, Governor Brown signed three bills into law that created a comprehensive state licensing and regulatory framework governing the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis in California. AB 243 (Wood, Chapter 688, Statutes of 2015), AB 266 (Bonta, Chapter 689, Statutes of 2015), and SB 643 (McGuire, Chapter 719, Statutes of 2015) collectively established the Medical Marijuana Regulation and Safety Act (later renamed to the Medical Cannabis Regulation and Safety Act (MCRSA)), to be administered by a number of state agencies: a Bureau of Cannabis Control (BCC) within the Department of Consumer Affairs (DCA); the California Department of Public Health (CDPH); and the California Department of Food and Agriculture.

Shortly following the passage of MCRSA, in November 2016, California voters passed Proposition 64, the “Control, Regulate and Tax Adult Use of Marijuana Act” (Prop 64), which decriminalized and legalized adult-use cannabis. Less than a year later in June 2017, the California State Legislature passed a budget trailer bill, SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017), that integrated MCRSA with Prop 64 to create the Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), the current regulatory structure for both medicinal and adult-use cannabis.

Beginning in 2018, Prop 64 permitted adults 21 years of age or older to legally grow, possess, and use cannabis for nonmedical purposes, with certain restrictions. Additionally, in 2018, as a result of Prop 64 and as codified in MAUCRSA, the state implemented a cannabis cultivation and excise tax, which imposes a weight-based tax on production of cannabis and a 15% tax on those who purchase cannabis or cannabis products that are sold in the state.

In 2020, Governor Newsom proposed consolidation of the three licensing and regulatory programs within separate state agencies to form a single department with a goal of streamlining and simplifying access to licensing and regulatory oversight of commercial cannabis activity. The onset of the COVID-19 pandemic delayed these efforts for one year, however, in 2021 the proposal was reintroduced and the Department of Cannabis Control (DCC) was established as a standalone state entity with both licensing, regulatory and enforcement authority.

DCC was designed to centralize and align critical licensing, compliance and enforcement responsibilities to help build a sustainable and successful legal cannabis market by creating a single point of contact for cannabis applicant, licensees and local governments. The goal was to ultimately simplify and centralize state regulatory efforts; improve coordination, including enforcement; reduce barriers to participation in the legal market; and incentivize greater local participation. However, key elements of existing structures and processes continue to be administered by various state agencies, including The Cannabis Equity Grants Program being housed within The Governor's Office of Business and Economic Development (GO-Biz) and ongoing funding through cannabis taxes, remain.

Licensing Structure

The current licensing structure begins both at the local level and then progresses to the state level, essentially creating a dual licensing process. 44 percent of cities and counties allow at least one type of cannabis business but each locality has a different set of rules and a different process these businesses must undergo in order to comply with regulatory requirements. Before a business can receive a license the DCC, the local authorization must be provided. Local requirements for cannabis businesses include, but are not limited to, a physical location, labor peace agreement, financial interest information, and application fees. Some locals such as the City of Los Angeles also require a "pre-application". This means that some operators face at least three separate applications. The state application consists of similar requirements as local permitting, including an application and licensing fees. Currently, DCC uses their three separate licensing systems, from legacy programs, corresponding with the different types of licensing. Last year, the Department was provided funding to begin the process of developing a single unified licensing system. Once a state license is issued, the licensee must annually renew. Due to the complexity and rigorous licensing processes in place at the local and state levels, applicants have utilized the provisional licensing scheme to operate while awaiting to complete the requirements necessary to attain annual licensure.

Under current law, a separate license is required for every corner of the cannabis market which includes growing cannabis, transporting cannabis, making cannabis products, testing cannabis products, selling cannabis, and holding an event where cannabis is sold. Each license type is distinct and must be approved before operating.

Applicants can submit an application for a state license before they are fully eligible. The DCC reports the following are average processing times at the state:

- Cultivation Licenses: 221 days
- Manufacturing Licenses: 180 days

- Distribution Licenses: 287 days
- Testing Laboratory Licenses: 851 days
- Retailer Licenses: 183 days
- Microbusiness Licenses: 244 days
- Event Organizer Licenses: 153 days
- Temporary Cannabis Event Licenses: 59 days

The DCC notes that these processing times are impacted by variety factors, including applicants submitting an incomplete application and lacking eligibility. Testing laboratories reportedly have a longer processing time given they have more complex license requirements, such as submitting a complete standard operating procedures and testing method validation.

The Committee should evaluate whether a dual licensing structure is the most efficient and effective way to license cannabis operators.

Provisional Licensing

Provisional Licensure was designed to help businesses to operate while transitioning into compliance with all requirements set forth in MAUCRSA including the California Environmental Quality Act (CEQA) and local permitting hurdles. The intention of these licenses were to be temporary in nature until an annual license could be issued; however, there remains significant operators still holding a provisional license. The industry is currently faces trouble transitioning from a provisional to an annual license. As of March 8, 2023, the DCC has 11,250 provisional licenses and only 6,425 annual licenses.

The challenges associated with local approval include access to capital, technical support, workforce development, securing business space, licensing fees and data application processing delays, access to capital and avoiding predatory business agreements, locating and maintaining a business premises, complying with CEQA, local Health Department requirements, and inspection delays, among others.

Until January 1, 2019, MAUCRSA authorized state licensing authorities to issue a provisional license if the applicant held a temporary license for the same premises and the same commercial activity to be authorized by the provisional license, and if the applicant had submitted a completed license application to the state, including evidence that compliance with CEQA is underway. MAUCRSA requires a provisional license to be valid for 12 months from the date it was issued, and prohibits a provisional license from being renewed.

In 2019, AB 97 (Committee on Budget, Chapter 40, Statutes of 2019) extended the provisional license program for two years until January 1, 2022. The bill deleted the requirement for a provisional license that an applicant holds or held a temporary license. The bill also revised the requirement for a provisional license that the applicant had submitted a completed license application to include evidence that compliance with CEQA or local cannabis ordinances was underway, if applicable, as specified. The bill required a provisional license to be valid for no more than 12 months from the date it was issued.

In 2021, Senator Caballero introduced SB 59, a bill that would have extended the repeal date of the provisional license provisions above to July 1, 2028. The bill also extended the MAUCRSA exemption that CEQA does not apply to the ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity until July 1, 2028. MAUCRSA, until July 1, 2021, provided that CEQA does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.

Ultimately, this issue was resolved in AB 141 (Committee on Budget, Chapter 70, Statutes of 2021) by revising the provisional licensing program again. It was at this time that the DCC was formed by consolidating the three legacy programs. The provisional licensing revisions allow local equity operators to apply for a new provisional license until March 31, 2023 and cultivation license applicants to apply for a new license until June 30, 2022. The revisions also included various CEQA changes to help cannabis cultivators come into compliance.

DCC may only allow for existing provisional licenses to renew until January 1, 2025. Because provisional licenses are eligible to be renewed every 12 months, by January 1, 2026, all licensees must operate under an annual license.

In 2021, California developed a Local Jurisdiction Assistance Grant Program (LJAG) (Budget Act of 2021, Item 1115-101-0001 and Senate Bill 129). LJAG allocated \$100 million on a one-time basis to aid seventeen local jurisdictions and their provisional licensees in completing environmental compliance requirements necessary to achieve annual licensure. LJAG funds are also be used to aid local jurisdictions in more expeditiously reviewing provisional licensee local permit requirements. Allowable uses of the program are intended to encourage local jurisdictions to administer grant funds in ways that assist in the transition of provisional licenses to annual licenses more expeditiously and prioritizes addressing CEQA licensing requirements.

DCC reported the following status of the money allocated:

| Jurisdiction | Total Grant Award | Total Spent as of August 12, 2022 | Transitions from Provisional to Annual Licensure (January 1, 2022 – December 31, 2022) |
|---------------------------|--------------------------|--|---|
| County of Monterey | \$1,737,035 | \$0.00 | 11 |
| County of Nevada | \$1,221,188 | \$0.00 | 49 |
| County of Sonoma | \$1,158,023 | \$52,178 | 5 |
| County of Lake | \$2,101,143 | \$123,747 | 53 |
| City of Oakland | \$9,905,020 | \$1,408,467 | 32 |
| County of Humboldt | \$18,635,137 | \$15,437 | 244 |
| County of Trinity | \$3,293,867 | \$600,000 | 3 |
| City of Long Beach | \$3,934,773 | \$0.00 | 4 |
| City of Santa Rosa | \$775,841 | \$0.00 | 7 |
| City of Sacramento | \$5,786,617 | \$10,789 | 62 |
| City of Commerce | \$416,320 | \$79,626 | 1 |

| | | | |
|---|---------------|-------------|-----------|
| City of Adelanto | \$972,696 | \$0.00 | 6 |
| City of Desert Hot Springs | \$822,160 | \$0.00 | 3 |
| City of San Diego | \$764,261 | \$6,291 | 8 |
| City of Los Angeles | \$22,312,360 | \$0.00 | 1 |
| City and County of San Francisco | \$3,075,769 | \$6,026 | 13 |
| County of Mendocino | \$17,586,4067 | \$3,100,959 | 4 |

The Committee may wish to determine what role DCC should play in assisting local jurisdictions to ensure cannabis operators remain in the legal market.

Social Equity

Millions of Californians were negatively impacted by the criminalization of cannabis and the “War on Drugs”. After the passage of Proposition 64, an industry that was loosely regulated by the state, and federally illegal now had the opportunity to integrate into a legal market but faced challenges. Individuals and families that faced criminal charges were negatively impacted by criminalization in a variety of ways, including negative financial impacts. The collateral consequences of this criminalization are still felt by individuals, families and communities to this day, and can make it harder to achieve licensure and maintain a business in a highly regulated and competitive legal market.

In an effort to support individuals negatively impacted by the War on Drugs more effectively compete in the legal cannabis market, the state has developed and funded a number of programs.

SB 1294 (Bradford, Chapter 794, Statutes of 2018) created the Cannabis Equity Act, which established a grant program to provide funding to local jurisdictions to develop and operate programs that focus on the inclusion of cannabis business who are from communities negatively or disproportionately impacted by cannabis criminalization, including providing these business owners financial support and technical assistance during the local and state licensing process.

The former Bureau of Cannabis Control (BCC) was appropriated \$10 million in the 2018 California Budget to effectuate the Act. The former BCC stated in a March 1, 2019 press release that it was accepting applications from eligible cities and counties until April 1, 2019, with plans to distribute all funds no later than June 30, 2019. On October 9, 2019, the BCC announced the 10 local jurisdictions that would be awarded these funds. Additional grants have been issued annually through this program and, since the Act’s creation, permanent funding has been established in Tier 1 allocations of the Cannabis Tax Fund to support the continuation of this program.

Now, the Governor’s Office of Business and Economic Development (GO-BIZ) administers the Cannabis Equity Grants Program for Local Jurisdictions. In fiscal year 2022-2023 GO-BIZ awarded \$14,876,270.14 to local jurisdictions for the continuation of supporting equity applicants and licensees in existing local equity programs and an additional \$123,729.86 to fund Cannabis Equity Assessment/Program Development in local jurisdictions that are just beginning the process of developing local equity programs.

SB 595 (Bradford, Chapter 852, Statutes of 2019) authorized a state licensing authority to provide a fee waiver or deferral for the cost, for an operative date upon appropriation in the budget, to obtain or renew a license issued by that licensing authority for a local equity applicant. Application fees from the three licensing authorities range from \$135 – \$1,000 depending on the type and size of the business, with commensurate license fees ranging from \$200 to \$300,000.

Following SB 595 (Bradford), SB 166 (Committee on Budget and Fiscal Review, Chapter 260, Statutes of 2021) created The California Cannabis Equity Act and required the DCC to develop and implement a fee waiver program by 2022 and a deferral program by 2023. This budget trailer bill provided a one-time \$30,000,000 appropriation to fund this program. Further, the bill established a statewide eligibility criterion that an operator must meet in order to access the fee waiver and deferral program. This criteria includes ownership thresholds, cannabis convictions or arrests, household income requirements, or applies to individuals living in an area disproportionately impacted by the War on Drugs and applies to businesses statewide, regardless of local equity programs. Locally verified equity applicants may also be eligible if they attest that they too satisfy the statewide criteria set forth in the definition. DCC reports 1,618 fee waivers worth approximately \$18,112,327 has been awarded as of February 27, 2023.

The Committee should determine what additional steps might be necessary to further support social equity applicants' successful navigation of the current complex licensing structure.

Cannabis Tax Fund

Proposition 64 set up the Cannabis Tax Fund for the collection of state cannabis excise tax. Monies from this fund are distributed in three allocations.

Allocation 1 is dedicated to regulatory and administrative costs, reimbursing certain state agencies for reasonable costs associate with implementing, administering, and enforcing MAUCRSA. The DCC is not eligible to be reimbursed through Tier 1 and is funded by license fees.

Following Allocation 1 distribution, Allocation 2 revenues are distributed to support academic research grants, including researching the efficacy of medicinal cannabis and the impacts of legalization. Allocation 2 also allocates funds to GO-Biz to grant funds that reinvests in communities harmed by the War on Drugs. Funding is also allocated to the California Highway Patrol to advance California's impaired driving efforts.

Allocation 2 funding to support academic research has been distributed to a variety of California based universities, including the University of California San Diego Center for Medicinal Cannabis Research to support the understanding of cannabis as a pharmacological agent, and through the DCC to California universities to research and evaluate the implementation and effect of MAUCRSA. The last public university research funding disbursement from BCC was in 2020 for over \$30 million. Recipients of these funds have reported delays in their research timelines due to university shutdowns during the pandemic. Once studies have been completed and made public, the DCC will publish those reports on their website. The DCC is in the process

of reviewing applications for up to \$20 million in funding and anticipate announcing awards within the next month.

After both Allocation 1 and 2 are met, Allocation 3 monies are set aside for youth education, prevention, early intervention, and treatment; environmental protection; and public safety-related activities

Specifically, Allocation 3 dedicates sixty percent of funds for programs for youth that are designed to educate about and prevent substance use disorders and harm from substance use. As part of this allocation, funding has gone towards the Youth Education Prevention, Early Intervention and Treatment Account (YEPEITA), which dedicates funding to childcare slots, prevention programs, and public health efforts. Within this account, the Department of Health Care Services (DHCS) receives funding for youth programs aimed to educate and prevent harm from substance use disorders. To support this effort, DHCS created an advisory group in 2019 to advise the department on how to spend the money allocated for this purpose. Through YEPEITA funds, DHCS has distributed funds to “Elevate Youth CA” which, according to their annual report, “is a statewide program supporting community leaders who are addressing substance use disorder by investing in the leadership development and activism of youth of color and LGBTQ2S+ youth ages 12 to 26.” However, it is unclear if there are other programs DHCS funds via YEPEITA.

Another 20 percent of Allocation 3 is directed to the Department of Fish and Wildlife (CDFW) and the Department of Parks and Recreation for cleanup, remediation, and restoration of environmental damage from cannabis cultivation, including to facilitate the investigation, enforcement, and prosecution of illegal activities; and the finally twenty percent is allocated for public safety-related activities, including to the California Highway Patrol to conduct training programs for detecting, testing, and enforcing laws against driving under the influence, including by cannabis, and to the Board of State and Community Corrections for grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of the Cannabis Act.

Another 20 percent of Allocation 3 funding is dedicated to the Environmental Restoration and Protection Account. This funding goes to the Department of Fish and Wildlife (CDFW) and Department of Parks and Recreation within the Natural Resources Agency. Among many other uses, CDFW has dedicated funds from this allocation to complete projects such as the “Reclaiming our Public Lands and Watersheds from the Environmental Threats of Cannabis Cultivation” and has five current projects aimed at conservation. DPR has used funds to establish the “Cannabis Watershed Protection Program” to prevent and alleviate environmental damage from cannabis cultivation.

The last 20 percent of Allocation 3 is dedicated to funding state and local law enforcement. The California Highway Patrol created the Cannabis Tax Fund Grant Program to give money to local agencies to help address impaired driving.

The Committees should evaluate programmatic effectiveness in providing these monies to intended recipients, communities, and stakeholders.