

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 287 (Quirk) – As Amended March 25, 2021

**SUBJECT:** Civil actions: statute of limitations.

**SUMMARY:** Extends the statute of limitations for an action for civil penalties to be brought against unlicensed cannabis activity from one year to three years.

**EXISTING LAW:**

- 1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act to provide for a comprehensive regulatory framework for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) §§ 26000 *et seq.*)
- 2) Establishes the Bureau of Cannabis Control (BCC) within the Department of Consumer Affairs, previously named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation, for purposes of regulating microbusinesses, transportation, storage, distribution, testing, and sale of cannabis and cannabis products within the state. (BPC § 26010)
- 3) Requires the BCC to convene an advisory committee to advise state licensing authorities on the development of standards and regulations for legal cannabis, including best practices and guidelines that protect public health and safety while ensuring a regulated environment for commercial cannabis activity that does not impose such barriers so as to perpetuate, rather than reduce and eliminate, the illicit market for cannabis. (BPC § 26014)
- 4) Provides the Department of Food and Agriculture with responsibility for regulating cannabis cultivators. (BPC § 26060)
- 5) Provides the Department of Public Health with responsibility for regulating cannabis manufacturers. (BPC § 26130)
- 6) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements. (BPC § 26030)
- 7) Subjects cannabis businesses operating without a license to civil penalties of up to three times the amount of the license fee for each violation in addition to any criminal penalties. (BPC § 26038)
- 8) Provides the following rules regarding the use of civil penalty funds collected from unlicensed activity:
  - a) If an action is brought by the Attorney General on behalf of the people, the penalty collected shall be deposited into the General Fund.

- b) If the action is brought by a district attorney or county counsel, the penalty shall first be used to reimburse the district attorney or county counsel for the costs of bringing the action for civil penalties, with any remainder to be deposited into the General Fund.
- c) If the action is brought by a city attorney or city prosecutor, the penalty collected shall first be used to reimburse the city attorney or city prosecutor for the costs of bringing the action for civil penalties, with the remainder, if any, to be deposited into the General Fund.

(BPC § 26038)

- 9) Requires that all accusations against licensees operating under the MAUCRSA shall be filed by the Department of Consumer Affairs within five years after the performance of the act or omission alleged to be the grounds for disciplinary action; and clarifies that the cause for disciplinary action in that case shall not be deemed to have accrued until discovery, by the licensing authority, of the facts constituting the fraud or misrepresentation, and, in that case, the accusation shall be filed within five years after that discovery. (BPC § 26034.)
- 10) Authorizes the Legislature to, by majority vote, enact laws to implement the state's regulatory scheme for cannabis if those laws are consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64). (BPC § 26000)
- 11) Provides that civil actions, without exception, can only be commenced within the periods prescribed in statute, after the cause of action has occurred, unless where, in special cases, a different limitation is prescribed by statute. (Code of Civil Procedure (CCP) § 312)
- 12) Generally requires that civil actions regarding the forfeiture or penalty to the people be filed within one year from the date of the events giving rise to the action. (CCP § 340)

#### **THIS BILL:**

- 1) Provides for a three-year statute of limitations for an action for civil penalties against unlicensed cannabis activity.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel. Because the bill authorizing the expenditure of civil penalties, which are general funds, to be used to reimburse the Attorney General and the licensing authority or participating agency, the bill would make an appropriation.

#### **COMMENTS:**

**Purpose.** This bill is sponsored by the **California District Attorneys Association**. According to the author:

“Shutting down the illicit market is critical to the successful implementation of Proposition 64, and imperative for allowing the legal cannabis industry to thrive. This is why Proposition 64 allowed for substantial civil penalties to be levied against bad actors. Portions of Proposition 64 provide for a 5-year statute of limitations while other sections, specifically those pertaining to the authority granted to the Attorney General, district attorneys and county counsel is silent. In this case, the statute of limitations defaults to one-year. Cannabis investigations are complex and

often involve multiple local and state agencies that investigate not only the cultivation or manufacturing aspect of the cannabis industry, but also environmental crimes associated with the grow. Concurrently, a host of consumer protection violations related to the advertisement or ingestion of cannabis products can also be a part of each investigation. By the time each of these agencies have completed their respective investigations, the one-year clock may have already run, preventing cases from being fully prosecuted.”

## **Background.**

*Early History of Cannabis Regulation in California.* Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. The initiative prohibited physicians from being punished or denied any right or privilege for making a medicinal cannabis recommendation to a patient. Proposition 215 also included findings and declarations encouraging the federal and state governments to implement a plan to provide for the safe and affordable distribution of cannabis to patients with medical needs.

The regulatory scheme for medicinal cannabis was further refined by SB 420 (Vasconcellos) in 2003, which established the state’s Medical Marijuana Program (MMP.) Under the MMP, qualified patients were eligible to obtain a voluntary medical marijuana patient card, which could be used to verify that the patient or a caregiver had authorization to cultivate, possess, transport, or use medicinal cannabis. The MMP’s identification cards were intended to help law enforcement officers identify and verify that cardholders were allowed to cultivate, possess, or transport limited amounts of cannabis without being subject to arrest. The MMP also created protections for qualified patients and primary caregivers from prosecution for the formation of collectives and cooperatives for medicinal cannabis cultivation.

Without the adoption of a formal framework to provide for state licensure and regulation of medicinal cannabis, a proliferation of informally regulated cannabis collectives and cooperatives were largely left to the enforcement of local governments. As a result, a patchwork of local regulations was created with little statewide involvement. More restrictive laws and ordinances by cities and counties were ultimately upheld by the California Supreme Court in *City of Riverside v. Inland Empire Patients* (2013) 56 Cal. 4<sup>th</sup> 729, which held that state law did not expressly or implicitly limit the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medicinal cannabis be prohibited from operating within its borders.

Even after several years of allowable cannabis cultivation and consumption under state law, a lack of a uniform regulatory framework led to persistent problems across the state. Cannabis’s continued illegality under the federal Controlled Substances Act, which classifies cannabis as a Schedule I drug ineligible for prescription, generated periodic enforcement activities by the United States Department of Justice. The constant threat of action by the federal government created apprehension among California’s cannabis community.

A document issued by the United States Attorney General in 2013 known as the “Cole memorandum” indicated that the existence of a strong and effective state regulatory system, and a cannabis operation’s compliance with such a system, could allay the threat of federal enforcement interests. Federal prosecutors were urged under the memo to review cannabis cases on a case-by-case basis and consider whether a cannabis operation was in compliance with a

strong and effective state regulatory system prior to prosecution. The memo was followed by Congress's passage of the Rohrabacher-Farr amendment, which prohibits the United States Department of Justice from interceding in state efforts to implement medicinal cannabis.

*MCRSA.* After several attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. MCRSA consisted of a package of legislation: AB 243 (Wood); AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood); and SB 643 (McGuire). MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the newly established BCC within the Department of Consumer Affairs, the CDPH, and the CDFA, with implementation relying on each agency's area of expertise.

MCRSA vested authority for:

- The BCC to license and regulate dispensaries, distributors, transporters, and (subsequently) testing laboratories, and to provide oversight for the state's regulatory framework;
- The CDPH to license and regulate manufacturers; and
- The CDFA to license and regulate cultivators.

While entrusting state agencies to promulgate extensive regulations governing the implementation of the state's cannabis laws, MCRSA fully preserved local control. Under MCRSA, local governments may establish their own ordinances to regulate medicinal cannabis activity. Local jurisdictions may also choose to ban cannabis establishments altogether.

*AUMA.* Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). The passage of the AUMA legalized cannabis for non-medicinal adult use in a private home or licensed business; allowed adults 21 and over to possess and give away up to approximately one ounce of cannabis and up to eight grams of concentrate; and permitted the personal cultivation of up to six plants. The law retained prohibitions against smoking in or operating a vehicle while under the effects of cannabis, possessing cannabis at a school or other child oriented facility while kids are present, growing in an unlocked or public place, and providing cannabis to minors.

The proponents of the AUMA sought to make use of much of the regulatory framework and authorities set out by MCRSA while making a few notable changes to the structure still being implemented. In addition, the AUMA approved by the voters adopted the January 1, 2018 deadline for state implementation of non-medicinal cannabis in addition to the regulations required in MCRSA that were scheduled to take effect on the same date. The same agencies given authority under MCRSA remained responsible for implementing regulations for adult use.

Under the AUMA, the BCC within the Department of Consumer Affairs continues to serve as the lead regulatory agency for all cannabis, both medicinal and non-medicinal. The AUMA includes 19 different license types compared to the original 17 in MCRSA, and provides the Department of Consumer Affairs (and the BCC) with exclusive authority to license and regulate the transportation of cannabis. The AUMA also authorizes vertical integration models which allows for the holding of multiple license types, as previously prohibited under MCRSA. Additionally,

while MCRSA required both a state and local license to operate, the AUMA only stipulated a state license; however, the state is also directed not to issue a license to an applicant if it would “violate the provisions of any local ordinance or regulation.”

The language of the AUMA allows for legislative modifications that “implement” or “give practical effect” to the law by a majority vote. However, what constitutes “implementing” has been interpreted to be limited. Consequently, proposed changes to the voters’ intent in the AUMA require a two-thirds vote and of those, some may be deemed to require voter approval.

*MAUCRSA.* In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was introduced to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws and deleted redundant code sections no longer necessary due to the combination of the two systems. MAUCRSA also clarified a number of components, including but not limited to licensing, local control, taxation, testing, and edibles.

*Regulations.* On January 16, 2019, the state’s three cannabis licensing authorities—the BCC, the CDPH, and the CDFA—officially announced that the Office of Administrative Law had approved final cannabis regulations promulgated by the three agencies respectively. These final regulations replaced emergency regulations that had previously been in place, and made various changes to earlier requirements following the public rulemaking process. The adoption of final rules provided a sense of finality to the state’s long history in providing for the regulation of lawful cannabis sale and use.

*Consolidation of Regulatory Entities.* In early 2021, the Department of Finance released trailer bill language proposing to create a new Department of Cannabis Control with centralized authority for cannabis licensing and enforcement activities. This new department would be created through a consolidation of the three current licensing authorities’ current programs. If the proposed reorganization is successful, there will likely need to be additional rulemaking to reconcile the state’s regulations with the newly created department.

*Statutes of Limitations.* Statutes of limitations specify how long a party has to bring legal action by filing a complaint. Currently, civil actions against unlicensed cannabis businesses fall under a general one-year statute of limitations by default for actions regarding the forfeiture or penalty to the people. However, statute enumerates a number of actions that may be commenced within three years. This bill would add civil actions against persons engaging in commercial cannabis activity without a license to that statute, effectively extending the statute of limitations for enforcement against the black market to three years.

**Current Related Legislation.** AB 1138 (Blanca Rubio) would subject any person who aids and abets unlicensed commercial cannabis activity to civil penalties of up to \$30,000 per day. *This bill is pending in the Assembly Committee on Judiciary.*

**Prior Related Legislation.** SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017) combined AUMA and MCRSA into one system for the regulation of cannabis, resulting in MAUCRSA.

**ARGUMENTS IN SUPPORT:**

This bill is sponsored by the **California District Attorneys Association (CDAA)**. The CDAA explains that “cannabis investigations are complex and often involve multiple local and state agencies that investigate not only the cultivation or manufacturing aspect of the cannabis industry, but also environmental crimes associated with the grow. Furthermore, a host of consumer protection violations related to the advertisement or ingestion of cannabis products are frequently investigated in parallel. By the time each of these agencies have completed their respective investigations, the one-year clock may have already run, which prevents the case from being fully prosecuted.”

This bill is also supported by the **California Cannabis Industry Association (CCIA)**. According to the CCIA, “the illicit cannabis market in California, which has seen more revenue than ever before in recent years, is our legal industry’s biggest competitor and most significant challenge. Illicit operations have no guarantee of age verification, do not pay any state taxes, and sell products without any of the rigorous safety or quality assurance requirements imposed on legal cannabis. Without ensuring regulators have the proper tools to enforce against illicit operations, success of our legal cannabis industry will continue to be stymied and the intent of Proposition 64 cannot fully be met.”

**ARGUMENTS IN OPPOSITION:**

None on file.

**REGISTERED SUPPORT:**

California District Attorneys Association (*Sponsor*)  
California Cannabis Industry Association

**REGISTERED OPPOSITION:**

None on file.

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