

ASSEMBLY THIRD READING
AB 287 (Quirk)
As Amended March 25, 2021
2/3 vote

SUMMARY

Extends the statute of limitations for bringing a civil action against a party engaging in unlicensed commercial cannabis activity from one year to three years.

Major Provisions

- 1) Extends the statute of limitations for an action for civil penalties based upon unlicensed activity under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) from one year to three years.
- 2) Makes other related non-substantive changes to the law.

COMMENTS

Under current law, the statute of limitations to bring a cause of action against a person who is engaged in commercial cannabis activity without a license is one year from the date when the unlicensed activity occurs. This bill would grant additional time to bring a claim against a person engaging in commercial cannabis activity without a license by extending the applicable statute of limitations for bringing an action from one year to three years.

Cannabis Regulation in California. In 1996, California voters passed Proposition 215, legalizing the use of medical cannabis in the state. In October 2015, nearly 20 years after the authorization of the use of medical cannabis, Governor Jerry Brown signed into law a trio of bills collectively known as the Medical Cannabis Regulation and Safety Act: AB 243 (Wood, Chap. 688, Stats. 2015); AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood, Chap. 689, Stats. 2015); and SB 643 (McGuire, Chap. 719, Stats. 2015). The Medical Cannabis Regulation Safety Act established the state's first regulatory framework for engaging in the lawful medical cannabis trade.

In 2016, the voters of California passed Proposition 64, the Adult Use of Marijuana Act, to legalize the recreational use of cannabis in the state. The authors of the act sought to make use of much of the regulatory structure and authorities set out by the earlier act regulating medical use of cannabis while making a few notable changes to the structure of that program. However, the same agency designated for the regulation of medical cannabis remains responsible for the regulation of adult use of recreational marijuana.

Under both acts regulating medical and recreational use of marijuana, the Department of Consumer Affairs serves as the lead regulatory agency and oversees the Bureau of Cannabis Control. There are 17 different types of licenses under the Medical Cannabis Regulation and Safety Act and 19 different types of licenses under the Adult Use of Marijuana Act. Both acts give the Bureau of Cannabis Control the exclusive authority to create and regulate a license for the operation or any commercial transfer of cannabis or cannabis products.

Regulation of Cannabis in Other States. As of 2016, 28 states, the District of Columbia, and Guam have enacted medical cannabis programs. Though California was the first state to authorize the medical use of cannabis, it was the only state that allowed cannabis use without a robust state regulatory framework until the passage of the Medical Cannabis Regulation and Safety Act. To date, eight states (Alaska, Colorado, Oregon, Washington, California, Nevada, Massachusetts, and Maine) and the District of Columbia have legalized the use of recreational cannabis.

Statutes of Limitations. Statutes of limitations specify how long a party has to bring legal action by filing a complaint. Statutes of limitations "are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." (3 Witkin, Cal. Procedure (5th ed. 2008).)

This bill. This bill impacts the combined Medicinal and Adult-Use Cannabis Regulation and Safety Act by extending the statute of limitations for claims brought against persons engaging in commercial cannabis activity without a license. Under the bill, the agency bringing the claim would have three years to file the action. This extension would provide the agency with a sufficient opportunity to discover the unlicensed activity, investigate the activity, and file a complaint. Without such language, existing law – which makes the default statute of limitations for bringing civil actions one year from the date of the events giving rise to the action – would apply.

This change is necessary because investigations into illegal cannabis activity are complex and involve multiple state and local government regulators and prosecutors. Furthermore, some investigations become even more complex when the initial investigation leads to the discovery of additional consumer protection violations. This bill allows the agencies that are authorized to bring civil actions based on unlicensed commercial cannabis activity – including the Attorney General, county counsel, district attorney, city attorney, and city prosecutor – to conduct a thorough investigation to determine whether the unlicensed activity is in violation of existing law before the statute of limitations to bring a claim against the unlicensed actor expires.

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 are 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.

Arguments in Support

The California Cannabis Industry Association supports this bill, writing as follows:

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.

The California District Attorneys Association is sponsoring this bill because, according to the association, extending the statute of limitations on these cases will allow for a more thorough investigation and increasing consumer and environmental protections.

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Possible cost pressures (Trial Court Trust Fund) in the low hundreds of thousands of dollars annually to the trial courts in increased workload given this bill extends the statute of limitations to bring an action for civil penalties against a person or business engaged in unlicensed activity in violation of the MAUCRSA. The estimated cost of one eight-hour court day is approximately \$7,644. It unknown how many claims may be filed. However, if five cases otherwise outside the existing statute of limitations are filed in civil court requiring 48 total hours (six days) of workload, the cost would be approximately \$229,320.

Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties. This is particularly true given that courts have delayed hundreds of trials and civil motions during the COVID-19 pandemic resulting in a serious backlog that must be resolved. The Governor's 2021-22 budget proposes \$72.2 million dollars in ongoing GF revenue for trial courts to continue addressing the backlog of cases in order to provide timely access to justice

- 2) Possibly significant increase in GF revenue to the extent the Department of Justice (DOJ) is able to prevail on civil actions otherwise precluded by the statute of limitations in existing law. Business and Professions Code section 26038(b) requires any penalty issued for unlawful commercial cannabis activity be deposited into the GF.

VOTES**ASM JUDICIARY: 11-0-0**

YES: Stone, Gallagher, Chau, Chiu, Davies, Lorena Gonzalez, Holden, Kalra, Kiley, Maienschein, Reyes

ASM BUSINESS AND PROFESSIONS: 19-0-0

YES: Low, Flora, Arambula, Berman, Bloom, Chen, Chiu, Cunningham, Megan Dahle, Fong, Gipson, Grayson, Holden, Irwin, McCarty, Medina, Mullin, Salas, Ting

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

UPDATED

VERSION: March 25, 2021

CONSULTANT: Victoria Anderson / Alison Merrilees / JUD. / (916) 319-2334 FN: 0000469