
**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Richard Roth, Chair
2021 - 2022 Regular

Bill No: AB 287
Author: Quirk
Version: March 25, 2021
Urgency: No
Consultant: Dana Shaker

Hearing Date: June 21, 2021

Fiscal: Yes

Subject: Civil actions: statute of limitations

NOTE: *Double-referral to Senate Committee on Judiciary, Second*

SUMMARY: Creates a three-year statute of limitations on civil actions for violations arising from a person engaging in unlicensed cannabis activities, extending the current one-year statute of limitations.

Existing law:

- 1) Establishes the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of both medicinal cannabis and adult-use cannabis. (Business and Professions Code (BPC) § 26000)
- 2) Establishes the Bureau of Cannabis Control (Bureau) under the Department of Consumer Affairs to regulate cannabis with the sole authority to create, issue, deny, renew, discipline, suspend, or revoke licenses for microbusinesses, transportation, storage unrelated to manufacturing activities, distribution, testing, and sale of cannabis and cannabis products within the state. (BPC §§ 26010, 26012 (a)(1))
- 3) Requires the California Department of Food and Agriculture (CDFA) to administer the portions of MAUCRSA related to and associated with the cultivation of cannabis. Delegates to CDFA the authority to create, issue, deny, and suspend or revoke cultivation licenses for violations of MAUCRSA. (BPC § 26012 (a)(2))
- 4) Requires the State Department of Public Health (DPH) to administer the provisions of MAUCRSA related to and associated with the manufacturing of cannabis products. DPH shall have the authority to create, issue, deny, and suspend or revoke manufacturing licenses for violations of MAUCRSA. (BPC § 26012 (a)(3))
- 5) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements. (BPC § 26030)
- 6) 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)
- 7) 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 will be deposited into the General Fund; b) if the action is brought by a district attorney or county counsel, the penalty will 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 will 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)

- 8) 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)
- 9) 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)
- 10) 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)
- 11) Authorizes the Legislature to enact laws by majority vote 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)

This bill creates a three-year statute of limitations on civil actions for violations arising from a person engaging in unlicensed cannabis activities, where the previous general statute of limitations was one year.

FISCAL EFFECT: This bill is keyed fiscal by Legislative Counsel. According to the Assembly Committee on Appropriations, this fiscal effect of this bill is as follows:

- 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.
- 2) 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 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.

- 3) 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, subdivision (b) requires any penalty issued for unlawful commercial cannabis activity be deposited into the GF."

COMMENTS:

1. **Purpose.** The California District Attorneys Association (CDAA) is the Sponsor of this bill. According to the Author, "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. However, 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. One year is insufficient time to investigate these cases."
2. **Background.** *Cannabis Regulatory Background.* Cannabis was first legalized in California for medical consumption by Proposition 215, also known as the Compassionate Use Act in 1996. Proposition 215 protected qualified patients and primary caregivers from prosecution related to the possession and cultivation of cannabis for medicinal purposes.

The Legislature passed the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015. 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 Bureau within Department of Consumer Affairs, the Department of Public Health, and the Department of Food and Agriculture, with implementation relying on each agency's area of expertise.

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 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 MAUCRSA.

Current Statute of Limitations and This Bill. A statute of limitations provides the length of time a party has to file a complaint. Currently, the Civil Code provides that a claim brought against a person engaging in unlicensed cannabis activity must be

brought within the first year of a violation. This bill would extend the amount of time that a person could bring an action from one year to three years. The Author has shared that this change is necessary because, given the complexity of cannabis cases, one year is an insufficient amount of time to discover the unlicensed activity, investigate the activity, and file a complaint. As the Sponsor notes in its letter of support, “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.”

Cannabis Consolidation Efforts. In an effort to improve access to licensing and simplify regulatory oversight of commercial cannabis activity, the Governor’s 2021 Budget includes a proposal to consolidate the three cannabis licensing entities that are currently housed at the Bureau, the Department of Food and Agriculture, and the Department of Public Health into a single Department of Cannabis Control by July 2021. Establishment of a standalone department with an enforcement arm is designed to centralize and align critical areas to build a successful legal cannabis market, by creating a single point of contact for cannabis licensees and local governments. The goal is 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.

3. **Related Legislation.** AB 1138 (Rubio) would subject any person who aids and abets unlicensed commercial cannabis activity to civil penalties of up to \$30,000 per day, among other things. (Status: *This bill is currently pending in the Senate Committee on Judiciary.*)

AB 2437 (Quirk, 2020) would have required an agency bringing a civil action for penalties related to unlicensed cannabis activity to do so within three years of discovery of the facts constituting the grounds for commencing the action. (Status: *This bill died without a hearing in the Assembly Committee on Judiciary.*)

SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017), that integrated MCRSA with Prop 64 to create MAUCRSA.

4. **Arguments in Support.** The California District Attorneys Association (CDAA) writes in support and sponsorship: “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.”

The California Cannabis Industry Association (CCIA) writes in support: “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.

CMG/Caliva writes in support: "Enforcement against bad actors is an urgent objective for the state if we are to force illegal businesses from the industry. Giving law enforcement and prosecutors the tools to accomplish that objective is a high priority. By lengthening the period in which the state can bring a civil action against an illicit operator, we will be affording our cannabis regulators greater capacity to protect and vitalize the legal cannabis marketplace."

SUPPORT AND OPPOSITION:

Support:

The California District Attorneys Association (Sponsor)
The California Cannabis Industry Association
CMG/Caliva

Opposition:

None received

-- END --