
THIRD READING

Bill No: AB 287
Author: Quirk (D), et al.
Amended: 3/25/21 in Assembly
Vote: 27

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 11-0, 6/21/21
AYES: Roth, Archuleta, Bates, Becker, Eggman, Hurtado, Jones, Min, Newman,
Ochoa Bogh, Pan
NO VOTE RECORDED: Melendez, Dodd, Leyva

SENATE JUDICIARY COMMITTEE: 11-0, 6/29/21
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird,
Stern, Wieckowski, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/26/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, McGuire

ASSEMBLY FLOOR: 78-0, 5/27/21 - See last page for vote

SUBJECT: Civil actions: statute of limitations

SOURCE: California District Attorneys Association

DIGEST: This bill 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.

ANALYSIS:

- 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 Department of Cannabis Control (Department) 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. Requires the Department to administer the portions of MAUCRSA related to and associated with the cultivation of cannabis and with the manufacturing of cannabis products. Delegates to the Department authority to create, issue, deny, and suspend or revoke cultivation or manufacturing licenses for violations of MAUCRSA. (BPC §§ 26010, 26012)
- 3) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements. (BPC § 26030)
- 4) 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)
- 5) 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)
- 6) 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)
- 7) 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)

- 8) 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)
- 9) 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.

Background

California 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 of Cannabis Control (BCC) 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.

In an effort to improve access to licensing and simplify regulatory oversight of commercial cannabis activity, the Governor signed AB 141 (Committee on

Budget, Chapter 70, Statutes of 2021) 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. 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 intent 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.

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.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, this bill will result in unknown, potentially-significant workload cost pressures to the courts to adjudicate charges brought that are outside the current one-year statute of limitation from when the alleged conduct occurred.

SUPPORT: (Verified 8/27/21)

California District Attorneys Association (source)
California Cannabis Industry Association
CMG/Caliva

OPPOSITION: (Verified 8/27/21)

None received

ARGUMENTS IN SUPPORT: Supporters say 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. Supporters also note that the illicit cannabis market in California is our legal industry's biggest competitor and most significant challenge and believe that enforcement against bad actors is an urgent objective for the state if we are to force illegal businesses from the industry.

ASSEMBLY FLOOR: 78-0, 5/27/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

Prepared by: Dana Shaker / B., P. & E.D. /
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