



SB-1186 Medicinal Cannabis Patients' Right of Access Act. (2021-2022)

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Senate Bill No. 1186

CHAPTER 395

An act to amend Section 26200 of, and to add Chapter 26 (commencing with Section 26320) to Division 10 of, the Business and Professions Code, relating to cannabis.

[Approved by Governor September 18, 2022. Filed with Secretary of State September 18, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1186, Wiener. Medicinal Cannabis Patients' Right of Access Act.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by Proposition 215 at the November 6, 1996, statewide general election, declares that its purpose is, among other things, to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes, as specified, and exempts from state criminal liability certain patients and their primary caregivers who possess or cultivate marijuana for the personal medical purposes of the patient. Existing law, known as the Medical Marijuana Program, establishes a voluntary registration program for qualified medicinal cannabis patients and their primary caregivers through a statewide identification card system maintained by the State Department of Public Health and sets forth guidelines for the possession of medicinal cannabis.

The Control, Regulate and Tax Adult-Use of Marijuana Act of 2016 (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, established a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana. AUMA reserved to a local jurisdiction specified powers regarding commercial adult-use cannabis activity, including adopting and enforcing local ordinances regulating commercial adult-use cannabis activity. Existing law, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities, including the retail sale of medicinal cannabis.

This bill would enact the Medicinal Cannabis Patients' Right of Access Act, which, on and after January 1, 2024, would prohibit a local jurisdiction from adopting or enforcing any regulation that prohibits the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers by medicinal cannabis businesses, as defined, or that has the effect of prohibiting the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers in a timely and readily accessible manner and in types and quantities that are sufficient to meet demand from medicinal cannabis patients within the local jurisdiction, as specified. The bill, on and after January 1, 2024, would provide that the act may be enforced by an action for writ of mandate brought by a medicinal cannabis patient or their primary caregiver, a medicinal cannabis business, the Attorney General, or any other party otherwise authorized by law.

This bill would incorporate additional changes to Section 26200 of the Business and Professions Code proposed by AB 2210 to be operative only if this bill and AB 2210 are enacted and this bill is enacted last.

To the extent this bill would impose additional duties on local jurisdictions, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 26200 of the Business and Professions Code is amended to read:

26200. (a) (1) Except as set forth in the Medicinal Cannabis Patients' Right of Access Act (Chapter 26 (commencing with Section 26320)), this division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.

(2) Except as set forth in the Medicinal Cannabis Patients' Right of Access Act (Chapter 26 (commencing with Section 26320)), this division shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.

(b) This division shall not be interpreted to require the department to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing, permitting, or other authorization requirements.

(c) A local jurisdiction shall notify the department upon revocation of any local license, permit, or authorization for a licensee to engage in commercial cannabis activity within the local jurisdiction. Within 60 days of being so informed, the department shall begin the process to determine whether a license issued to the licensee should be suspended or revoked pursuant to Chapter 3 (commencing with Section 26030).

(d) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this division and the regulations promulgated by the department, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall assume complete responsibility for any regulatory function pursuant to this division within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(e) (1) This division does not prohibit the issuance of a state temporary event license to a licensee authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding temporary events of this nature, provided that the activities, at a minimum, comply with all the following:

(A) The requirements of paragraphs (1) to (3), inclusive, of subdivision (g).

(B) All participants who are engaged in the onsite retail sale of cannabis or cannabis products at the event are licensed under this division to engage in that activity.

(C) The activities are otherwise consistent with regulations promulgated and adopted by the department governing state temporary event licenses.

(D) A state temporary event license shall only be issued in local jurisdictions that authorize such events.

(E) A licensee who submits an application for a state temporary event license shall, 60 days before the event, provide to the department a list of all licensees that will be providing onsite sales of cannabis or cannabis products at the event. If any changes occur in that list, the licensee shall provide the department with a final updated list to reflect those changes. A person shall not engage in the onsite retail sale of cannabis or cannabis products, or in any way participate in the event, who is not included in the list, including any updates, provided to the department.

(2) The department may impose a civil penalty on any person who violates this subdivision, or any regulations adopted by the department governing state temporary event licenses, in an amount up to three times the amount of the license fee for each violation, consistent with Sections 26018 and 26038.

(3) The department may require the event and all participants to cease operations without delay if in the opinion of the department or local law enforcement it is necessary to protect the immediate public health and safety of the people of the state. The department may also require the event organizer to immediately expel from the event any participant selling cannabis or cannabis products without a license from the department that authorizes the participant to sell cannabis or cannabis products. If the unlicensed participant does not leave the event, the department may require the event and all participants to cease operations immediately.

(4) The order by the department for the event to cease operations pursuant to paragraph (3) does not entitle the event organizer or any participant in the event to a hearing or an appeal of the decision. Chapter 3 (commencing with Section 490) of Division 1.5 and Chapter 4 (commencing with Section 26040) of this division shall not apply to the order by the department for the event to cease operations pursuant to paragraph (3).

(5) The smoking of cannabis or cannabis products at temporary events authorized pursuant to this subdivision is prohibited in locations where smoking is prohibited. For purposes of this section, "smoking" has the same meaning as defined in subdivision (c) of Section 22950.5.

(f) This division, or any regulations promulgated thereunder, shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

(g) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a retailer or microbusiness licensed under this division if all of the following are met:

(1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older.

(2) Cannabis consumption is not visible from any public place or nonage-restricted area.

(3) Sale or consumption of alcohol or tobacco is not allowed on the premises.

(h) This division shall not be interpreted to supersede Section 6404.5 of the Labor Code.

SEC. 1.5. Section 26200 of the Business and Professions Code is amended to read:

26200. (a) (1) Except as set forth in the Medicinal Cannabis Patients' Right of Access Act (Chapter 26 (commencing with Section 26320)), this division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.

(2) Except as set forth in the Medicinal Cannabis Patients' Right of Access Act (Chapter 26 (commencing with Section 26320)), this division shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.

(b) This division shall not be interpreted to require the department to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing, permitting, or other authorization requirements.

(c) A local jurisdiction shall notify the department upon revocation of any local license, permit, or authorization for a licensee to engage in commercial cannabis activity within the local jurisdiction. Within 60 days of being so

informed, the department shall begin the process to determine whether a license issued to the licensee should be suspended or revoked pursuant to Chapter 3 (commencing with Section 26030).

(d) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this division and the regulations promulgated by the department, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall assume complete responsibility for any regulatory function pursuant to this division within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(e) (1) This division does not prohibit the issuance of a state temporary event license to a licensee authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding temporary events of this nature, provided that the activities, at a minimum, comply with all the following:

(A) The requirements of paragraphs (1) to (3), inclusive, of subdivision (g).

(B) All participants who are engaged in the onsite retail sale of cannabis or cannabis products at the event are licensed under this division to engage in that activity.

(C) The activities are otherwise consistent with regulations promulgated and adopted by the department governing state temporary event licenses, except as otherwise provided in paragraphs (6), (7), and (8).

(D) A state temporary event license shall only be issued in local jurisdictions that authorize such events.

(E) A licensee who submits an application for a state temporary event license shall, 60 days before the event, provide to the department a list of all licensees that will be providing onsite sales of cannabis or cannabis products at the event. If any changes occur in that list, the licensee shall provide the department with a final updated list to reflect those changes. A person shall not engage in the onsite retail sale of cannabis or cannabis products, or in any way participate in the event, who is not included in the list, including any updates, provided to the department.

(2) The department may impose a civil penalty on any person who violates this subdivision, or any regulations adopted by the department governing state temporary event licenses, in an amount up to three times the amount of the license fee for each violation, consistent with Sections 26018 and 26038.

(3) The department may require the event and all participants to cease operations without delay if in the opinion of the department or local law enforcement it is necessary to protect the immediate public health and safety of the people of the state. The department may also require the event organizer to immediately expel from the event any participant selling cannabis or cannabis products without a license from the department that authorizes the participant to sell cannabis or cannabis products. If the unlicensed participant does not leave the event, the department may require the event and all participants to cease operations immediately.

(4) The order by the department for the event to cease operations pursuant to paragraph (3) does not entitle the event organizer or any participant in the event to a hearing or an appeal of the decision. Chapter 3 (commencing with Section 490) of Division 1.5 and Chapter 4 (commencing with Section 26040) of this division shall not apply to the order by the department for the event to cease operations pursuant to paragraph (3).

(5) The smoking of cannabis or cannabis products at temporary events authorized pursuant to this subdivision is prohibited in locations where smoking is prohibited. For purposes of this section, "smoking" has the same meaning as defined in subdivision (c) of Section 22950.5.

(6) (A) All licensees who are issued a state temporary event license allowed pursuant to this subdivision may, upon completion or cessation of the temporary event, reconcile unsold inventory of cannabis or cannabis products and return it to the licensee's retail premises.

(B) All unsold inventory of cannabis or cannabis products from the temporary event shall be noted in track and trace prior to transport.

(C) All unsold inventory of cannabis or cannabis products from the temporary event shall be in its original packaging in which it was placed pursuant to Chapter 12 (commencing with Section 26120).

(7) The inventory of cannabis or cannabis products authorized to be sold by a state temporary event license pursuant to this subdivision shall only be transported to and from the temporary event by a licensed distributor or licensed microbusiness.

(8) The department shall not deny an application for a state temporary event license pursuant to this subdivision solely on the basis that there is a license issued pursuant to the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000)) for the proposed premises of the event. Furthermore, the Department of Alcoholic Beverage Control shall not take any disciplinary action against a person licensed pursuant to the Alcoholic Beverage Control Act on the basis of a state temporary event license issued by the department to a licensee pursuant to this subdivision that utilizes the same premises as the person licensed pursuant to the Alcoholic Beverage Control Act.

(A) All on- and off-sale privileges of alcoholic beverages at the venue shall be suspended for the day of the event and shall not resume until 6 a.m. on the day after the event has ended.

(B) Alcohol consumption on the venue premises shall be strictly prohibited for the day of the event and shall not resume until 6 a.m. on the day after the event has ended.

(f) This division, or any regulations promulgated thereunder, shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

(g) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a retailer or microbusiness licensed under this division if all of the following are met:

(1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older.

(2) Cannabis consumption is not visible from any public place or nonage-restricted area.

(3) Sale or consumption of alcohol or tobacco is not allowed on the premises.

(h) This division shall not be interpreted to supersede Section 6404.5 of the Labor Code.

(i) This section does not alter or affect the prohibition on the sale of alcoholic beverages by a licensee, as provided in Section 26054, on or at a venue premises licensed under this division.

SEC. 2. Chapter 26 (commencing with Section 26320) is added to Division 10 of the Business and Professions Code, to read:

CHAPTER 26. Medicinal Cannabis Patients' Right of Access Act

26320. The Legislature finds and declares as follows:

(a) Access to medicinal cannabis is an integral aspect of access to health care, and eliminating barriers to medicinal cannabis access is essential to promoting and preserving the health of Californians for whom physicians have recommended the use of cannabis or cannabis products.

(b) It is the policy of the state and the intent of the Legislature to ensure that Californians throughout the state have timely and convenient access to safe, effective, and affordable medicinal cannabis.

26321. (a) This act shall be known, and may be cited, as the Medicinal Cannabis Patients' Right of Access Act.

(b) For purposes of this chapter:

(1) "Medicinal cannabis" means medicinal cannabis or medicinal cannabis products, as those terms are defined in paragraph (1) of subdivision (ai) of Section 26001.

(2) "Medicinal cannabis business" means a retailer authorized to engage in the retail sale by delivery of medicinal cannabis to medicinal cannabis patients pursuant to an M-license.

(3) "Medicinal cannabis patient" means a qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who possesses a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2, or a qualified patient or primary caregiver for a qualified patient issued a valid identification card pursuant to Section 11362.71 of the Health and Safety Code.

(4) "Regulation" means a local ordinance, regulation, policy, or practice.

26322. (a) A local jurisdiction shall not adopt or enforce any regulation that prohibits the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers, or that otherwise has the effect of prohibiting the retail sale by delivery within the local jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers by licensed medicinal cannabis businesses in a timely and readily accessible manner, and in types and quantities that are sufficient to meet demand from medicinal cannabis patients within the local jurisdiction, including, but not limited to, regulation of any of the following that has the effect of prohibiting the retail sale by delivery of medicinal cannabis:

(1) The number of medicinal cannabis businesses authorized to deliver medicinal cannabis in the local jurisdiction.

(2) The operating hours of medicinal cannabis businesses.

(3) The number or frequency of sales by delivery of medicinal cannabis.

(4) The types or quantities of medicinal cannabis authorized to be sold by delivery.

(5) The establishment of physical premises from which retail sale by delivery of medicinal cannabis within the jurisdiction is conducted by a licensed nonstorefront retailer, except that this paragraph shall not be construed to require the establishment of additional physical premises in a local jurisdiction that allowed medicinal cannabis retail as of January 1, 2022, and in which at least one physical premises engaged in the retail sale of medicinal cannabis, whether storefront or delivery, is already established.

(b) Nothing in this chapter shall be construed to prohibit the adoption or enforcement of reasonable regulations on retail sale by delivery of medicinal cannabis, including, but not limited to, reasonable regulations related to:

(1) Zoning requirements that are not inconsistent with subdivision (a). If compliance with subdivision (a) would otherwise require a local jurisdiction to authorize a physical premises from which retail sale by delivery of medicinal cannabis within the jurisdiction is conducted, this paragraph shall not be construed to alter that requirement.

(2) Security or public health and safety requirements.

(3) Licensing requirements.

(4) The imposition, collection, and remittance of any applicable state or local taxes upon retail sales occurring within the local jurisdiction.

(5) Regulations consistent with requirements or restrictions imposed on cannabis businesses by this division or regulations issued under this division.

(c) Nothing in this chapter shall be construed to limit or otherwise affect the ability of a local jurisdiction to adopt or enforce any regulations on commercial cannabis operations other than retail sale by delivery of medicinal cannabis in the local jurisdiction.

(d) This section shall become operative on January 1, 2024.

26323. (a) This chapter may be enforced by an action brought pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure by any of the following parties, who shall be beneficially interested within the meaning of Section 1086 of the Code of Civil Procedure:

(1) A medicinal cannabis patient or their primary caregiver who seeks to purchase medicinal cannabis or medicinal cannabis products within the local jurisdiction.

(2) A medicinal cannabis business that seeks to offer medicinal cannabis for sale within the local jurisdiction.

(3) The Attorney General.

(4) Any other party otherwise authorized by law.

(b) This section shall not be construed to limit the availability of any other remedy otherwise available to enforce this chapter. The existence of any other remedy shall not restrict the availability of relief to enforce this chapter under Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure.

(c) This section shall become operative on January 1, 2024.

26324. Nothing in this chapter shall be construed to limit or otherwise affect the ability or right of a local jurisdiction to regulate adult-use cannabis pursuant to Section 26200.

26325. This chapter addresses a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 26200 of the Business and Professions Code proposed by both this bill and Assembly Bill 2210. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends Section 26200 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 2210, in which case Section 1 of this bill shall not become operative.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.